No. 86-77

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

ARLENE NORDGREN, PETITIONER

V.

JEROME HAFTER, CHAIRMAN, MISSISSIPPI BOARD OF BAR ADMISSIONS and the MISSISSIPPI BOARD OF BAR ADMISSIONS: DAVID R. SMITH, WILLIAM JOEL BLASS, BENNIE TURNER, GRADY F. TOLLISON, JR., T.J. LOWE, JR., WILLIAM S. MOORE, W.D. BROWN, JR., CATHERINE BABER, EXECUTIVE SECRETARY OF THE MISSISSIPPI BOARD OF BAR ADMISSIONS,

RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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46pp

QUESTIONS PRESENTED FOR REVIEW

1. Does a federal court have subject matter jurisdiction pursuant to a 42 USCA § 1983 case and pursuant to Brandon v. Holt, 105 S.Ct. 873 (1985), Wilson v. Garcia, 105 S.Ct. 1938 (1985) and Loudermiller v. Cleveland Board of Educ., 105 S.Ct. 1487 (1985)?

2. May a federal court and appeals court contravene the decision of the United States Supreme Court pursuant to Supreme Court of New Hampshire v. Piper, 105 S.Ct. 1272 (1985) pursuant to the Privilege and Immunities Clause USCA CONST ART IV § 2 by allowing citizens of Mississippi, Mississippi non ABA law school graduates to be eligible for the February 1984 Mississippi bar exam--preferential treatment--while inflicting ineligibility in citizens of other states, non Mississippi non ABA law school graduates, non citizens of Mississippi?

3. May the district court and the Court of Appeals contravene the decision of the United States Supreme Court in Hunter v. Underwood, 105 S.Ct. 1916 (1985) in not permitting stand-

ing for petitioner? May the state of Mississippi, the Mississippi district court and the Court of Appeals for the Fifth Circuit contravene the Fourteenth Amendment, Discrimination of race pursuant to a statute which was neutral on its face, but contained an invidious discrimination of race pursuant to eligibility of graduates from non-Mississippi non ABA law schools?

4. May a district court delegate judicial powers to Mississippi state officials, the Mississippi Board of Bar Admissions, without a violation of the powers granted solely to the federal judiciary pursuant to USCA CONST ART III § 1?

5. Do non-Mississippi non-ABA law school graduates have a right to license pursuant to First Amendment, right of association without sanctions pursuant to political ideas of equal rights?

6. May the district court and the appeals court contravene the Fourteenth Amendment, USCA CONST AMEND 14, by denying equal pro-

tection to petitioner, an out of state applicant, for the Mississippi bar exam, and non Mississippi non ABA law school graduates when eligible for the February 1984 Mississippi bar exam were:

Mississippi non ABA law school graduates

Mississippi Preceptors (2 years college no legal education, no legal degree)

A Mississippi legally blind applicant.

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USCA CONST AMEND 14

USCA CONST ART III § 1

USCA CONST ART IV § 2

42 USCA § 1983

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

ARLENE NORDGREN,

Petitioner,

v.

JEROME HAFTER, CHAIRMAN, MISSISSIPPI BOARD OF BAR ADMISSIONS AND THE MISSISSIPPI BOARD OF BAR ADMISSIONS: DAVID R. SMITH, WILLIAM JOEL BLASS, BENNIE TURNER, GRADY F. TOLLISON, JR., T.J. LOWE, JR., WILLIAM S. MOORE, W.D. BROWN, JR., CATHERINE BABER, EXECUTIVE SECRETARY OF THE MISSISSIPPI BOARD OF BAR ADMISSIONS,

Respondents,

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Arlene Nordgren, pro se, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Court of Appeals for the Fifth Circuit which affirmed the lower court opinion on May 12, 1986.

OPINIONS BELOW

The District Court for the Southern District of Mississippi denied subject matter jurisdiction over the matter concerning petitioner's application to the Mississippi Board of Bar Admissions. The district court denied all constitutional issues and rendered Summary Judgment in favor of Defendant-Respondents by final judgment order entered August 27, 1985. The Court of Appeals for the Fifth Circuit affirmed the judgment of the trial court on May 12, 1986.

JURISDICTION

Under 28 U.S.C. § 1254 (1),

> "the Supreme Court may review cases in the federal courts of appeals by Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

Pursuant to affirming the decision of the district court, the decision of the Court of Appeals for the Fifth Circuit became a final judgment May 12, 1986 and from this decision, a petition for Writ of Certiorari is hereby presented pursuant to 28 U.S.C.§ 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

USCA CONST ART IV § provides in pertinent part:

> "The Citizens of each State shall be entitled to all privileges and Immunities of Citizens in the several States."

USCA CONST ART III § 1 provides in pertinent part:

> "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

STATEMENT OF CASE

Petitioner is qualified under the statute to take the February 1984 Mississippi bar exam. Petitioner applied in good faith in reliance that the Rules Governing Admission to the Mississippi State Bar and Suppliment supplied to petitioner by the Mississippi Board of Bar Admissions were true and correct. Petitioner

is a citizen of the United States and a resident of California, however domiciled in Mississippi in 1983 due to the military orders of her husband.

This action arose under the Constitution of the United States particularly under the provisions of USCA CONST AMEND 14, Equal Protection, Discrimination of Race, and Due Process, USCA CONST AMEND 1, Right of Association without sanctions, and 42 USCA § 1983. In addition, USCA CONST ART IV § 2 Privilege and Immunities Clause. Petitioner is a graduate from a California non ABA law school accredited for the California Bar Exam. Petitioner is now a 46 year old white female of Jewish heritage, with 9 years of college education including a legal education and J.D. degree.

Petitioner is married to a United States Navy Commander who was transferred by military orders to NAS Meridian, Mississippi in 1983 as Commander of VT-9 air training squadron. Cdr. Nordgren has had a 20 year career as a

naval aviator with many tours of duty including Vietnam and has been awarded two Meritorious Service Medals.

Petitioner was a high school teacher for many years and holds a Life Teaching Credential from the state of California. Petitioner took the oath to uphold the Constitution of the United States every year she taught.

Petitioner's college education consists of a bachelor degree from the University of Southern California. Thirty graduate units from the University of California, San Diego. A J.D. degree from National University, School of Law, San Diego, California, accredited for the California State Bar.

On February 13, 1984, 10 days before the bar exam, and in reply to Mr. Hafter's letter requiring an additional $325 non-refundable check after destroying petitioner's first check and considered a withdrawl of her application, petitioner sent a second check with copies to the United States Attorney's office.

Petitioner saught assistance from United States Navy legal officer who reviewed the rule and agreed petitioner was qualified.

The district court awarded Summary Judgment to defendant-respondents based on their allegations in their Motion for Summary Judgment that the Statutes I and II[1] were identical. That is an untrue statement. Pursuant to FRCP Rule 56, requires that the evidence be viewed in the light most favorable to the non-moving party and that the presence of a genuine issue of material fact will bar summary judgment.

There was a dual set of statutes, distinctively different in wording, meaning and requirements. Statute I was approved by the Mississippi Supreme Court. Statute II was approved by the Mississippi legislature.

Petitioner was supplied by the Mississippi Board of Bar Admissions with Statute I, Rules Governing Admission to the Mississippi

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[1] Statutes I & II, Appendicies B (p.25a-26a) (p.28a-29a)

State Bar which she qualified under and relied upon in making application.

Defendant-respondents admitted into evidence their Exhibit A, Statute I to their Motion for Summary Judgment.

The district court ruled that the Mississippi Supreme Court has sole power over bar rules and admissions. The statute which was applicable to petitioner's application was Statute I.[2] The Mississippi Board of Bar Admissions imposed Statute II[3] which petitioner had no notice. Statute II was newly amended and published after petitioner's application. The district court took Judicial Notice of Statute II, a statute not properly admitted into evidence by defendant-respondents pursuant to their Motion for Summary Judgment. The district court in its opinion denied defendant-respondents Eleventh Amendment Immunity,

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[2] appendicies B. Statute I, Rules Governing Admission to the Mississippi State Bar (p. 25a-26a)

[3] appendicies B Statute II, MS Code 1972 § 73-3-2 (p. 28a-29a)

judicial and legislative immunity, good faith immunity, and many other items in respondents Motion for Summary Judgment, yet the district court awarded Summary Judgment to respondents. Petitioner's case was pursuant to 42 USCA § 1983, yet the district court refused subject matter jurisdiction pursuant to petitioner's bar application while awarding Summary Judgment to respondents over the same matter arising from the same set of facts. Fundamental fairness in the federal court was absent.

Pursuant to Privilege and Immunities Clause, USCA CONST ART IV § 2 unequal treatment of out of state non Mississippi non ABA law school graduates (non-residents), in favor of their own, Mississippi non ABA law school graduates, Mississippi Preceptors (2 years college, no legal education, no legal degree) and a Mississippi legally blind applicant burdened citizens of other states and violated USCA CONST ART IV § 2 when there were less restrictive means, the Mississippi bar exam.

The Fourteenth Amendment, Equal Protection requires equal treatment of the same classes. Non Mississippi non ABA law school graduates were in the same class as Mississippi non ABA law school graduates. Denial of license to non Mississippi non ABA law school graduates was unequal treatment along with eligibility for the Mississippi Preceptor and a Mississippi legally blind applicant.

It is a violation of the Fourteenth, Discrimination of Race to restrict blacks from license thus limiting black access to the Mississippi Courts. There has been an invidious discrimination of race. Petitioner is a graduate of a non Mississippi non ABA law school which carries the stigma of a black law school in the south. Due to segregation in the south, blacks traditionally attended non ABA law schools.

Non Mississippi non ABA law school graduates possess political ideas of equal rights and as such have a right to license pursuant to First Amendment, Right of Association without sanctions.

The district court in its opinion stated that a decision of the Mississippi Board of Bar Admissions is analogous to the Supreme Court decision. In delegating federal judicial powers to Mississippi state officials, the federal court went beyond those judicial powers enumerated in USCA CONST ART III § 1.

The district court failed to render a decision pursuant to petitioner's APPLICATION FOR REVIEW filed January 16, 1985 pursuant to defendant-respondents destruction of evidence and violation of an oral court order thus avoiding review of a higher court and denying petitioner due process right to review.

The district court denied any violation of the United States Constitution. This decision was affirmed by the Court of Appeals for the Fifth Circuit.

ARGUMENT

Two courts in the same geographical location, the south, have rendered decisions which contravene recent decisions of the United States Supreme Court, the United States

Constitution and federal law. The precise argument pursuant to the Supremacy Clause is shall federal law prevail?

One of the basic issues is whether petitioner who crossed the Mississippi border pursuant to her husband's military orders has any protection from the tyranny of the state in rebuffing citizens of other states in favor of their own.

Non Mississippi non ABA law school graduates were in the same class as Mississippi non ABA law school graduates, and were treated unequal. Non Mississippi non ABA law school graduates were more qualified than Mississippi Preceptors (2 years college, no legal education, no legal degree) but were treated unequal. A Mississippi legally blind applicant was eligible for the Mississippi bar exam.

On another tier of this issue is the invidious discrimination of race. One has to look at the motivation, intent, of the statute.

Within the borders, Mississippi can control racial enrollments in their two law schools. The Mississippi non ABA law school recently merged with Mississippi College, School of Law which in 1985 became ABA accredited.[4]

The traditional ABA law school in Mississippi is the University of Mississippi School of law which was segregated due to segregation. In June 1984, there were no black male graduates. Mississippi has a history of racial discrimination.

Although black citizens of Mississippi have United States Constitutional rights and civil rights pursuant to United States Congress legislation, they do not reside in Washington, D.C. They have limited access to the courts due to the deep prejudice and intimidation of taking civil rights cases which exist today. It is a repressed society. Lawyers are unwilling to take unpopular cases

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[4] The so mentioned "grandfather Clause," 1979 to 1985 was an unreasonable 6-year duration for discrimination of non citizens

be they black or white. The intimidation is of great risk to the reputation of their law firm, friends or family.

In 1983, after this case was filed, the first black judge (one of three in the state of Mississippi) was appointed to the Mississippi Supreme Court along with the first black to be appointed a federal judge.

The society is deep-rooted in pre-civil war traditions. To help a black would bring shame to the family name. Mississippi is a repressed society regardless of the 1964 civil rights legislation. Today, civil rights cases have little access to the courts of Mississippi.

In 1964 there were three black lawyers. In 1983-84 there were 200 as compared with 5,000 white lawyers. Blacks could not attend the University of Mississippi, School of Law due to segregation. Due to the prejudice existing today in Mississippi and a lack of educational opportunities for blacks, the black legal opportunities exist in the non

Mississippi non ABA law schools in the south. To close the borders of Mississippi to blacks pursuant to legal license is to limit forever black access to the courts in future generations. All citizens of the United States should have the opportunity of fair and impartial counsel. Having sufficient black lawyers and an adequate supply of individuals possessing ideas of equal rights would guarantee future access to the Mississippi courts for civil rights violations and guarantee black Mississippi citizens their constitutional rights pursuant to the United States Constitution and citizenship as a United States citizen.

As the limited population of black Mississippi lawyers become retired, the production within Mississippi of black lawyers restricted, and the out of state black lawyers restricted by statute, the disproportionate impact of little access to the Mississippi courts for civil rights violations will be felt ten years from now.

Do we as Americians have the right to equal justice under the law? Does that mean an impartial tribunal and impartial, non biased counsel should be available in Mississippi?

The decision made by this court will impact the future generations of black Mississippi.

Eoes the location of Mississippi warrant a careful consideration of this case pursuant to the southern geographical location and history of prejudice and discrimination in Mississippi?

I.

A FEDERAL COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO A 42 USC § 1983 CASE AND PURSUANT TO THE FOLLOWING UNITED STATES SUPREME COURT OPINIONS: Brandon v. Holt, 105 S.Ct. 873 (1985), Wilson v. Garcia, 105 S.Ct. 1938 (1985), and Loudermiller v. Cleveland Board of Educ., 105 S.Ct. 1487 (1985).

Pursuant to Loudermiller, supra, unreviewed state administrative agency has no claim preclusive effect in subsequent 1983 action in federal court.

Under 42 USCA § 1983, Brandon v. Holt, supra, which upheld Monell v. N.Y. City Dep. of Soc. Serv., 98 S.Ct. 2018 (1978), the

federal district court has subject matter jurisdiction with regards to the action of the Mississippi Board of Bar Admissions on Petitioner's application.

The federal district court had subject matter pursuant to diversity in that petitioner is a resident of California and Mr. Hafter is a resident of Mississippi as well as the other respondents and the claim was over $10,000, exactly, $10,999.

Petitioner brought her claim under the United States statute, 42 USC § 1983. Penant jurisdiction relates to a situation in a federal court whereby the federal court may hear both the federal constitution questions and the state claim when they arise out of the same set of facts.

According to Justice Stevens' opinion in Wilson v. Garcia, supra at 1949:

> "Finally, we are satisfied that Congress would not have characterized § 1983 as providing a cause of action analogous to state remedies for wrongs committed by public officials."
> ..."The characterization of a § 1983 claim is a matter of federal law," Wilson, supra at 1941

According to Wilson, supra at 1942

> ..."in determining the rules of decision applicable to civil rights claims" ..."a third step asserts the predominance of the federal interest."

Not found in the statute or in Wilson, supra, the permissibility of a district court to deny subject matter jurisdiction pursuant to a 42 USCA § 1983 claim.

> "Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action."
> Wilson, supra at 1944.

> "§ 1983 provides a uniquely federal remedy against incursions under claimed authority of state law upon rights secured by the Constitution and laws of the nation." Wilson, supra at 1945.

> "The specific historical catalyst for the civil rights Act of 1871 was the campaign of violence and deception in the South, formented by the Ku Klux Klan, which was denying decent citizens their civil and political rights."
> Briscoe v. LaHue, 103 S.Ct. 1108 (1983)"
> Wilson, supra at 1947.

> "The unifying theme of the Civil Rights Act of 1871 is reflected in the language of the 14 amendment that unequivocally recognizes the equal status of every 'person' subject to the jurisdiction of any of the several states."
> Wilson, supra at 1948.

II.

PURSUANT TO Supreme Court of New Hampshire v. Piper, 105 S.Ct. 1272 (1985), EARNING A LIVING IN ONE'S CHOSEN OCCUPATION, THE PRACTICE OF LAW, IS A FUNDAMENTAL RIGHT PROTECTED BY THE PRIVILEGE AND IMMUNITIES CLAUSE, USCA ART IV § 2

According to Piper, supra, the Court viewed the practice of law as a livelihood subject to a fundamental right under Article IV of the Constitution and held that the state bar's rule did not advance legitimate state interest in the least restrictive way possible.

Discriminating against citizens of other states in favor of their own: Mississippi non ABA law school graduates, Mississippi Preceptors (2 years college, no legal degree), and a Mississippi legally blind applicant burdens citizens of other states, the non Mississippi non ABA law school graduates and is a violation to the Privilege and Immunities Clause, USCA ART IV § 2.

> "In deciding whether the discrimination bears a close or substantial relationship to the state's objective, the Court has considered the availability of less restrictive means," supra at 1279.

The less restrictive means for petitioner and non Mississippi non ABA law school graduates, non citizens of Mississippi, would have been access to license, the Mississippi bar exam.

III.

IT IS A VIOLATION OF USCA CONST AMEND 14 DISCRIMINATION OF RACE TO RESTRICT BLACKS FROM LICENSE THUS LIMITING BLACKS' ACCESS TO THE MISSISSIPPI COURTS. PURSUANT TO Hunter v. Underwood, 105 S.Ct. 1916 (1985), PETITIONER WOULD HAVE STANDING TO ASSERT BLACK DISCRIMINATION.

According to Hunter v. Underwood, supra, there is standing to assert invidious discrimination of a statute, even though as in Hunter, supra, poor whites as well as blacks were discriminated against. Hunter, supra, looked at the motivation, intent of the statute.

There is a history of discrimination of race in Mississippi. There existed in 1964 three black lawyers in Mississippi. Today there are 200 as compared to 5,000 white lawyers. In Hawkins v. Town of Shaw, Miss.

> "Persons or groups who are treated differently must be shown to be similarly situated and their unequal treatment demonstrated to be without any rational basis or based upon an in-

vivious factor such as race." (CA 5 1971) 437 F.2d. 1286.

There has been an invidious discrimination of race. Petitioner is a graduate of a non Mississippi non ABA law school which carries the stigma of a black law school in the south. Due to segregation in the south, blacks traditionally attended non ABA law schools. Brown v. Board of Educ., 74 S.Ct. 686 (1954). In Sweatt v. Painter, 339 U.S. 629 (1950), Texas had established a law school for blacks and this case required the admission of blacks to the University of Texas Law School. University of Mississippi School of Law was traditionally segregated and is the Mississippi ABA law school traditionally (Jackson Law School has recently merged with Mississippi College, School of Law. Mississippi College, School of Law became ABA accredited in 1985.

Judicial Notice can be taken that segregation and discrimination of blacks in education has caused a lack of educational opportunities for these people. University of

California Regents v. Bakke, 98 S.Ct. 273 (1978) stated that any type of quota that allowed a certain class but discriminated upon the other class was illegal.

Elimination of non Mississippi non ABA law schools from eligibility in Mississippi is de facto discrimination; it thus has a discriminatory effect and racially disproportionate impact. Washington v. Davis, 96 S.Ct. 2040 (1976).

It can be noted that ABA law schools have few blacks due to the lack of educational opportunities for blacks. Because of irrational prejudice against blacks, the statute singles out non Mississippi non ABA law school graduates. Through the revised statute and the current status of Jackson Law School merging with Mississippi College, School of Law which became ABA accredited in 1985, the statute can control racial enrollments in their law schools. Mississippi restricts enrollment of blacks in their law schools. The standards are exceptionally

high for blacks who experienced a lack of educational opportunities in Mississippi due to segration, and find the opportunity for law school education in non Mississippi non ABA law schools in the south.

The quota for blacks in the University of Mississippi, School of Law is approximately ten. There were no black male graduates from the University of Mississippi, School of Law in June 1984, only 9 females. Women are more easily intimidated in regards to their license. To litigate a license invalidation would take many years and the individual would be unable to work and provide for their families.

The intent of the statute was to have Mississippi College, School of Law become ABA accredited as it was in 1985,[5] enabling Mississippi to close its borders to black law school graduates from outside

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[5] The so mentioned "grandfather Clause," 1979 to 1985 was an unreasonable 6-year duration for discrimination of non-citizens

the state of Mississippi. From within the state there would be control of racial enrollments and continued repression.

The fact that petitioner is white is incidental, the statute violates Equal Protection because it was intended to discriminate against blacks, and invidious discrimination of race and identified as such in Hunter, supra.

Few ABA law school graduates from out of the state of Mississippi come to Mississippi, and the majority are white due to a lack of educational opportunities for blacks. If one limits by statute the number of blacks available for the Mississippi bar exam, one is limiting the black citizens in Mississippi the accessibility to the courts.

By controlling by statute the preference for white law school graduates, the blacks who are predominately in non ABA law schools in the south are excluded, not by quota, but by statute.

The statute further limits the number of

black law school graduates who wish to live in the state. If one does not have access to license, one cannot be employed as a lawyer and would be unable to live and work as a lawyer in Mississippi. It also causes the discouragement of blacks to live in the state as the increasing difficulty with access to the courts, repression.

> "This is not to say that the necessary discriminatory racial purpose must be express or appear on the face of the statute, or that a law's disproportionate impact is irrelevant in cases involving Constitution-based claims of racial discrimination. A statute otherwise neutral on its face, must not be applied so as invidiously to discriminate on the basis of race." Yick Wo v. Hopkins, 6 S.Ct. 1064 (1886)

> "A statutory classification is subject to strict scrutiny where such classification if based on suspect criterion like race, nationality, or alienage, irrespective of whether classification impinges upon fundamental or basis right." Jagnandan v. Giles, 379 F. Supp. 1178 (D.C. Miss. 1974)

> "There is involved here an exercise.. which trenches upon the constitutionally protected freedom from invidious official discrimination based on race." McLaughlin v. Florida, 85 S.Ct. 283 (1964).

A statute otherwise neutral on its face

must not be applied so as invidiously to discriminate on the basis of race. The significant intent of the Mississippi statute was to eliminate by statute blacks from non ABA law schools. Mississippi traditionally had the Preceptor requiring no legal education and eligibility for Mississippi non ABA law school graduates from Jackson Law School and Mississippi College, School of Law. Within Mississippi, there was control of black enrollments. Mississippi cannot control black enrollments from outside Mississippi. Due to segregation, blacks attended non ABA law schools. Although facially neutral, the Court unanimously concluded that the provision operated in a racially discriminatory manner and had been adopted with racially discriminatory manner and had been adopted with racially discriminatory intent. It also has a grossly disproportionate impact. Hunter, supra.

IV.

PURSUANT TO USCA CONST ART III § 1, THE DISTRICT COURT IN DELEGATING JUDICIAL POWERS TO STATE OFFICIALS, THE MISSISSIPPI BOARD OF BAR ADMISSIONS, VIOLATES THE POWERS GRANTED SOLELY TO THE FEDERAL JUDICIARY.

The district court in its opinion, Nordgren v. Hafter, 616 F. Supp., at 747, 748 related that a decision of the Mississippi Board of Bar Admissions is analogous to a Supreme Court decision.

> "The Board's action in denying plantiff's (petitioner's) application, the Board was exercising authority on behalf of the Court." supra at 748.

USCA CONST. ART III § 1 states:

> "The judicial power of the United States, shall be vested in one Supreme Court."

The Constitution of the United States does not delegate judicial power of the United States Supreme Court or any federal court to a state official.

A decision of this nature in a federal court would carry with it the permissibility of a federal court delegating judicial powers to state or federal officials which contravenes the United States Constitution, Article III § 1.

That is inconsistant with the United States Constitution, ART III § 1, grants of judicial power. Those judicial powers set forth in Article III section 1 may not be delegated to a state official.

The federal district court in delegating judicial powers to a state official went beyond those judicial powers enumerated in USCA CONST ART III § 1.

The United States Constitution set forth and enumerates the separation of powers between Executive, Legislative, and Judicial very specifically. Judicial review is the foundation of democracy in the United States. No individual or individuals be they state officials or United States Presidents are above the law. Senate Sel. Comm. on Pres. Campaign Act. v. Nixon, 162 U.S. App. D.C. 183; 498 F.2d 725 (1974).

Therefore, the district court, in stating that the decision of the Mississippi Board of Bar Admissions is alalogous to a Supreme Court ruling, delegated judicial powers not enumerated in the United States

Constitution and which contravene USCA CONST ART III § 1.

V.

NON MISSISSIPPI NON ABA LAW SCHOOL GRADUATES POSSESS POLITICAL IDEAS OF EQUAL RIGHTS AND AS SUCH HAVE A RIGHT TO LICENSE PURSUANT TO FIRST AMENDMENT RIGHT OF ASSOCIATION WITHOUT SANCTIONS AND PURSUANT TO: NAACP v. Alabama, 78 S.Ct. 1163 (1958) NAACP v. Button, 83 S.Ct. 328 (1963) Roberts v. U.S. Jaycees, 104 S.Ct. 3244 (1984).

Ideas of equal rights were traditionally fostered in non ABA law schools in the south due to segregation, and continue to be fostered in non ABA law schools outside Mississippi.

Non Mississippi non ABA law schools help to form ideas of equal rights and while not a political organization, per se, they act very much like a political organization in the formation of political ideas.

Supression of free expression of ideas of equal rights because of association with those institutions which foster political ideas of equal rights is a prior restraint.

Imposing a punishment for association with non Mississippi non ABA law schools by creating ineligibility for the Mississippi

bar exam is a prior restraint on political ideas of equal rights.

The Mississippi Board of Bar Admissions is the Mississippi licensing authority and imposes a prior restraint and censorship upon ideas of equal rights flowing from these institutions and sanctioning expression of association with non Mississippi non ABA law schools which foster ideas of equal rights.

The Mississippi Board of Bar Admissions and its statute has a chilling effect on the ideas of equal rights and association with institutions fostering political ideas of equal rights, the non Mississippi non ABA law schools.

A prior restraint is regarded as impermissible if approval by the board is "not a matter of routine" but involves

> "appraisal of facts, the exercise of judgment and the formation of an opinion by the board." Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 554 (1975).

The First Amendment, Right of Association

protects an individual pursuant to attending and associating with institutions fostering political ideas of equal rights, the non Mississippi non ABA law schools. USCA CONST AMEND 1 protects:

> "...including the right to engage in association." NAACP v. Button, 83 S.Ct. 328 (1963). Baird v. State Bar of Ariz. 91 S.Ct. 702 (1971).

MS Code 1972 § 73-3-2 (published Sept. 1983) violates the First Amendment, freedom to associate and attend non Mississippi non ABA law schools and be licensed. The statute punishes those individuals for associating with non ABA law schools outside the state of Mississippi by creating ineligibility for the Mississippi bar exam.

When there are fewer lawyers with ideas of equal rights, fewer civil rights cases will be tried in the courts in Mississippi, a chill to freedom of political ideas of equal rights and repression.

It is important,

> "...To allow the individual in out society to achieve economic advance-

ment and political and social integration that have historically plagued certain disadvantaged groups, including women." Roberts v. U.S. Jaycees, 104 S.Ct. 3244 (1984).

"Consequently, the right to engage in association with others in pursuit of political, social, economic, educational, religion and cultural ends is protected by the First Amendment." NAACP v. Alabama, 357 U.S. 462 (1958).

"...the Court evinced a concern with an association's ability to advocate the beliefs of its members and recognize that an association may be able to realize objectives that differ in qualitatively from those attainable by individuals." Rep. Party State of Conn. v. Tashjian, 770 F.2d (CA 2 1985) at 277.

"The principles announced in NAACP v. Alabama have been reaffirmed consistently as courts continue to protect the individualistic component of freedom of association not only against direct attack, but also against inroads by the insidious interference that often follows public identification with a controversial organization, ..." NAACP v. Alabama, 78 S.Ct. 1163, 1171 (1958)" Rep. Party of State of Conn. v. Tashjian, supra.

Justice Brennan related:

"Choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the state because of the role of such relationships in safeguarding the individual freedom that is central to our constitution scheme;" "Freedom of

> association, therefore, is to be protected as a fundamental component of our personal liberty." Roberts v. U.S. Jaycees, 104 S.Ct. 3244 (1984).

The association rights derived from the First Amendment are entitled to heightened judicial protection. Rep. Party of State of Conn. v. Tashjian, supra.

Decisions teach that interference with associational rights may be justified only by narrowly drawn regulations that serve compelling state interest.

> "State regulation that substantially burdens First Amendment rights of political association may be upheld only if it is necessary to advance compelling state interest and only if it is tailored to advance those interest in least restrictive manner. USCA CONST AMEND 1." Rep. Party of State of Conn., supra at 266.

Justice Black:

> "First Amendment forbids a state to impose a sanction or withhold a benefit because of what a man believes." Law Students Research Council v. Wadmond, 91 S.Ct. 720 (1971)

Petitioner believes in equal rights. The law school which petitioner attended fostered these beliefs. The Court has

long recognized that because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of associations with institutions which produce ideas of equal rights without sanctions.

> "certain kinds of associations with institutions has played a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideas and beliefs; they thereby foster diversity and act as critical buffers between the individual and the power of the bar." NAACP v. Alabama, 357 U.S. 449, 460-462 (1958).

> "consequently, the right to engage in association with others in pursuite of political, social, economic, educational religion and cultural ends is protected by the First Amendment." NAACP v. Alabama, at 462.

Sanctions as ineligibility for the Mississippi bar exam because of association with a non Mississippi non ABA law school is a chill to First Amendment rights.

VI.

PURSUANT TO THE FOURTEENTH AMENDMENT, EQUAL PROTECTION REQUIRES EQUAL TREATMENT OF THE SAME CLASS. NON MISSISSIPPI NON ABA LAW SCHOOL GRADUATES WERE IN THE SAME CLASS AS MISSISSIPPI NON ABA LAW SCHOOL GRADUATES. UNEQUAL TREATMENT OF NON MISSISSIPPI NON

ABA LAW SCHOOL GRADUATES IN PREFERENCE FOR MISSISSIPPI PRECEPTORS (2 years college, no legal education, no legal degree) AND A MISSISSIPPI LEGALLY BLIND APPLICANT.

Eligible for the February 1984 Mississippi bar exam were Mississippi non ABA law school graduates. Petitioner was in the same class, non Mississippi non ABA law school graduate. Eligible also were Mississippi Preceptor's (2 years college, no legal degree). Petitioner was more qualified than a Mississippi Preceptor. Eligible also was a Mississippi legally blind applicant. Petitioner's Fourteenth Amendment, Equal Protection rights were violated.

The unequal treatment between eligibility for the Mississippi non ABA law school graduates and ineligibility for Petitioner, a non Mississippi non ABA law school graduate with 9 years education at the graduate level, undergraduate degree from the University of Southern California, 30 graduate units from the University of California, San Diego, high school teaching experience and a

California Life teaching credential, legal education and J.D. degree which included a clinical internship of law clerking and a years work for a San Diego law firm, was unequal treatment as set forth in the statute RULE V, Rules Governing Admission to the Mississippi State Bar. (appendix B p. 20a). However, Petitioner was qualified under the statute, supra, because of RULE V. 1. B., the integrated 6-year law school program she graduated from.

Petitioner's law school curriculum consisted of the following: Torts, Criminal Law and Criminal Procedure, Community Property, Property Law, Corporations and Agency, Legal Methods, Probate, Wills, Trusts, International Law, Remedies, Evidence, Accounting and the Law, Contracts, Uniform Commercial Code, Civil Procedure and Constitutional Law.

The following individuals were eligible for the Mississippi bar exam in February 1984:

Mississippi non ABA law school graduates from Jackson Law School and Mississippi College School of Law (the two merged).

Mississippi Preceptors (2 years college, no legal education, no legal degree).

ABA law school graduates from outside Mississippi.[6]

The unequal treatment between eligibility for the Mississippi bar exam for the Preceptor with no legal education or degree and only 2 years of college, no undergraduate degree, while denying eligibility to Petitioner with 9 years at the graduate level, undergraduate degree, legal education, legal degree was illogical.

The rational thought would have been to protect the public from the Mississippi Preceptor with no legal education. Petitioner is and was more qualified than a Mississippi

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[6] ABA law school graduates from University of Mississippi received diploma privilege to June 1984. Shenfield v. Prather, 387 F. Supp. 676 (N.D. Miss. 1974)

Preceptor and petitioner is an was as qualified as a Mississippi non ABA law school graduate. Petitioner was and is as qualified as a Mississippi legally blind applicant. The unequal treatment violated petitioner's rights pursuant to USCA CONST AMEND 14, Equal Protection.

The cases which upheld the ABA accreditation requirement were issues of ABA law school graduates versus non ABA law school graduates, with equal treatment to all non ABA law school graduates.

Petitioner's case is entirely different in that there is an unequal treatment between the Mississippi non ABA law school graduates and non ABA law school graduates from outside the state of Mississippi.

This case is different in the fact that there is an unequal treatment between the Mississippi Preceptor and the non Mississippi non ABA law school graduate. There is an invidious discrimination of the non Mississippi non ABA law school graduate.

The evidence submitted on March 27, 1985, Appenage to Declaratory Judgment motion, further related that a candidate for the 1979 exam, Terese Troxclair, a graduate from Western State University, College of Law was from Mississippi. Western State University, College of Law is a California non ABA law school with an integrated 6-year program.

The evidence further related that a legally blind Mississippi applicant, Bobby Darby was permitted to take the February 1984 Mississippi bar exam and passed.

The statute was arbitrary, capricious and unreasonable in its unequal treatment of non Mississippi non ABA law school graduates.

The statute, RULE V,[7] permitted eligibility in Mississippi non ABA law school graduates:

> "However, an applicant who, as of November 1, 1981, is or was pre-

[7] Statute I, Appendix B (p. 25a-26a)

viously enrolled in a law school in active existence in Mississippi for more than ten (10) years prior to the date of application shall be eligible for examination for admission..."

The statute permitted eligibility for the Mississippi Preceptor:

"However, an applicant who has already begun the general course of study of law as of Nov. 1, 1979, either in a law school or under the supervision of a Mississippi lawyer shall submit proof he had successfully completed two (2) full years of college work."

The statute permitted eligibility for petitioner, however, she was denied:

"has received a bachelor's degree from an accredited college or university or has received credit for the requirements of the first (3) years of college work from a college or university offering an integrated six-year course."

Petitioner received a bachelor's degree from the University of Southern California, an accredited college and completed her law course at National University, School of Law which offered such an integrated six-year course. Petitioner graduated in an integrated six-year course from National University, School of Law in June 1981. In 1979 National University purchased Cabrillo Law School

which had an integrated program. That part of the sale included National University, School of Law continuing such a program. Petitioner transferred into this integrated program and graduated in this program in 1981 from National University, School of Law which qualified petitioner under the Mississippi statute to take the Mississippi bar exam.[8]

In City of Cleburne, Texas v. Cleburne Living Center, Inc., 105 S.Ct. 427 (1985), the Court decided that the statute in Texas was "irrational," and a violation of the Equal Protection Clause.

Speaking through Justice White, the Court explained that most legislation is presumed valid as long as it is rationally based on a legitimate state interest.

The Equal Protection Clause, however, mandates closer scrutiny of laws that

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[8] The district court ruled in its opinion 616 F. Supp. 742 (1985), that the requirements in the statute were separate.

classify persons based on race, alienage, national origin, illegitimacy, or gender. Petitioner's gender is female and she is Jewish, "quasi-suspect" class in the south pursuant to the Ku Klux Klan.

State legislation which singles out non Mississippi non ABA law school graduates is an invidious discrimination and violates USCA CONST AMEND 14.

> "States cannot exclude persons from practice of law in a manner or for reasons that contravene due process or Equal Protection and a state may not under guise of regulating legal profession, ignore constitutional rights. 42 USCA § 1983; USCA CONST AMEND 14," Louis v. Supreme Court of Nevada, 490 F. Supp. 1174, 1176(1980), NAACP v. Button, 83 S.Ct. 328 (1963)
>
> "A state may not protect the public fisc by drawing an invidious distinction between classes of its citizens." USCA CONST AMEND 14, Memorial Hosp. v. Maricopa County, 94 S.Ct. 1976 (1974).
>
> "Where a statutory classification infringes on Constitutional rights, Court's duty is clear and such classification is not permitted unless legislature succeeds in demonstrating a compelling state interest." U.S. v. Thompson, 452 F. 2d 1333, 92 S.Ct. 1251 (1971).
>
> "The practice of law is not a matter

> of grace but of right for one who is qualified by his learning and his moral character." Baird v. State Bar of Arizona, 91 S.Ct. 702 (1971).

Petitioner is of good moral character. She holds a Life Teaching Credential from the State of California, proof of good moral character. Petitioner is as qualified by her legal education as a Mississippi non ABA law school graduate, a Mississippi legally blind applicant and petitioner is more qualified by her legal education than a Mississippi Preceptor with no undergraduate degree and no legal education or degree.

Petitioner's access to license did not

> "...constitute the particular source of evil" Toomer v. Witsell, 334 U.S. 385, 398 (1948)

but rather the public should be protected from the Mississippi Preceptor with no legal education. The less restrictive alternative would have been access to the exam for petitioner.

USCA CONST AMEND 14 § 1 states:

> "Nor shall State deprive.. nor deny to any person within its jurisdiction the equal protection of the laws."

To classify non Mississippi non ABA law school graduates as ineligible for an exam and allow eligibility for Mississippi nor. ABA law school graduates, Mississippi Preceptors and a Mississippi legally blind applicant is unequal treatment which is an invidious discrimination and contravenes the Fourteenth Amendment, Equal Protection Clause.

CONCLUSION

This Petition for Certiorari represents what may be the last act in this litigation to insure the future generations of black Mississippians equal access to the courts. This entire litigation stems from acts of public authorities which can only be described as gross. The district court awarded attorney fees to respondents. Respondents have profited by their bad acts, i.e., distruction of evidence, bar files. (Petitioner's APPLICATION FOR REVIEW filed January 16, 1985).

The events portrayed by this appeal and

as described by the courts below, could occur because the respondents, Mississippi state officials totally and blatently ignored the federal laws and the United States Constitution and public trust. Fundamental fairness was absent in the federal courts.

Because of their actions, the petitioner a qualified applicant received civil punishment by being denied license in her chosen livelihood and has been deprived of rights guaranteed to her by federal law and the United States Constitution.

The law is clear and has, in the main, been consistently applied by the Court pursuant to the First Amendment, Right of Association without sanctions, Fourteenth Amendment, Equal Protection, Due Process, Discrimination of Race and Privilege and Immunities Clause, and 42 USCA § 1983.

What is at issue her is not whether petitioner who crossed the Mississippi border pursuant to her husband's military

orders has any protection from the tyranny of the state in rebuffing citizens of other states in favor of their own, but whether or not Mississippi state officials, the Mississippi federal court, and the federal court of appeals can act with indifference to the United States Constitution and federal laws.

If that can be done, then the constitutional guarantees have no meaning for they can be subverted at will.

This case could insure future black generations of Mississippi their equal rights pursuant to equality of race, equal access to the courts of Mississippi for violations of those rights and insure equal justice under the law.

FOR THE FOREGOING REASONS, in the interest of justice, petitioner respectfully requests this Honorable Court to issue a Writ of Certiorari to review the judgment and opinion of the Court of Appeals of the Fifth Circuit.

Respectfully Submitted

Arlene Nordgren

Arlene Nordgren, Pro Se
Petitioner

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APPENDIX TO

Petition for Writ of Certiorari to the UNITED STATES SUPREME COURT from the Court of Appeals for the Fifth Circuit

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

EASTERN DIVISION

ARLENE NORDGREN, Plaintiff vs. JEROME HAFTER, CHAIRMAN, MISSISSIPPI BOARD OF BAR ADMISSIONS, ET AL Defendants	CIVIL ACTION NO. E84-0130(L)

JUDGMENT

This civil action came on for hearing before the Court on Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment and Plaintiff's Application for Review, Motion for Summary Judgment/ Declaratory Judgment, and Motion for Declaratory Judgment. For the reasons stated in the Court's Memorandum opinion dated August 27, 1985, IT IS HEREBY ORDERED AND ADJUDGED:

1. That Plaintiff's Motion for Summary Judgment/Declaratory Judgment and Motion for Declaratory Judgment is denied;

2. That Defendants' Motion for Summary Judgment is granted;

3. That Plaintiff is entitled to no relief whatsoever, and Plaintiff's Complaint, Amended Complaint, and Plaintiff's cause of action are finally dismissed with prejudice;

4. In view of the granting of Defendants' Motion for Summary Judgment, it is unnecessary to consider the various pending motions filed by Plaintiff; and

5. That Plaintiff is hereby assessed with all costs of this civil action.

SO ORDERED AND ADJUDGED, this, the 6th day of September 1985.

_____
Tom S. Lee
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION
CIVIL ACTION NO. E84-0130(L)

ARLENE NORDGREN — PLAINTIFF

V.

JEROME HAFTER, CHAIRMAN, MISSISSIPPI BOARD OF BAR ADMISSIONS AND THE MISSISSIPPI BOARD OF BAR ADMISSIONS: DAVID R. SMITH, WILLIAM JOEL BLASS: BENNIE TURNER: GRADY F. TOLLISON, JR., T.J. LOWE, JR., WILLIAM S. MOORE, W.D. BROWN, JR., CATHERINE BABER — Defendants

MEMORANDUM OPINION

This action is brought by the plaintiff arlene nordgren, pro se, against Jerome Hafter, Chairman of the Mississippi Board of Bar Admissions,[1] the individual members of the Board and Catherine Baber, Executive Secretary of the Board,[2] pursuant to

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1 The Mississippi Board of Bar Admissions is sometimes hereinafter referred to as the "Board".

2 Pursuant to a joint motion to dismiss and an agreed order of dismissal entered on February 8, 1985, thirty-one of the original thirty-three defendants were dismissed from this action by the court.

42 U.S.C. § 1983 and 28 U.S.C. § 1343. Plaintiff's suit is based upon her being denied the opportunity to take the Mississippi Bar examination because of her failure to possess a law degree from a law school approved or accredited by the Section on Legal Education of the American Bar Association. (ABA). The plaintiff asserts that she is qualified to sit for the bar exam and alleges that the denial of her application by the Board and the requirement of ABA accreditation give rise to a variety of constitutional claims and a violation of the Sherman Antitrust Act. She has further alleged that the defendants, in denying her application, have committed certain torts including trespass to chattel, conversion, misrepresentation and fraud. Currently pending before the court are defendant's motion to dismiss or, in the alternative, for summary judgment and plaintiff's application for review, motion for summary judgment/declaratory judgment and motion for declaratory judgment.

The plaintiff, a legal resident of the State of California, currently resides in Meridian, Mississippi with her husband, a United States Naval Officer stationed at the Meridian Naval Air Station. She holds a bachelor's degree from the University of Southern California and is a graduate of National University School of Law, a non-ABA-accredited law school.[3]

The defendants include members and an employee of the Mississippi Board of Bar Admissions. The Board of Bar Admissions was created by the legislature and is composed of nine individuals appointed by the Justices of the Supreme Court of Mississippi. Miss. Code Ann. § 73-3-2(3) (Supp. 1984). While the power to admit persons to practice

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[3] Apparently, the plaintiff also attended Western State University College of Law in San Diego, California for three years but later transferred to and graduated from National University School of Law. Complaint at 3.

law in the State of Mississippi is vested exclusively in the State Supreme Court, Miss. Code Ann. § 73-3-2(1), the Board has the authority to promulgate rules necessary for the administration of its duties subject to the approval of the Chief Justice of the State Supreme Court. Miss. Code Ann. § 73-3-2(3). The primary function of the Board is to inquire into the qualifications, legal training and character and fitness of those persons seeking to practice law in Mississippi, and then either certify or not certify such individuals as meeting the qualifications for admission to practice law as set out in Miss. Code Ann. § 73-3-2.

On July 19, 1983, plaintiff sent an application along with a check for the required $325.00 application fee to the Board of Bar Admissions. Mississippi, like many other states, requires that applicants be graduates of a law school provisionally or fully approved by the ABA. Miss. Code Ann. § 73-3-2(2)(a). Because the plaintiff's application revealed that she had not

graduated from an ABA-accredited law school, it was not docketed and her check was not deposited in the state treasury. In January 1984, plaintiff was informed that her application had not been processed and that her check had been returned to her. She never received the actual check but later did receive a photocopy of the check which showed it to be torn in several places, presumably by someone working in the office of the Board of Bar Admissions. In a letter dated February 7, 1984, from defendant Hafter to plaintiff's attorney J.L. Pritchard, Hafter stated that if plaintiff desired to proceed further with her application, she would have to send to the Board's office a new application fee together with any additional material to be considered. He further advised that if she decided to proceed, her application fee would be deposited and would not be refundable. On February 13, 1984, in accordance with Hafter's letter, the plaintiff sent a second check to the Board,

in effect asking that her application be considered. On February 27, 1984, after polling the members of the Board, Hafter, as Chairman of the Mississippi Board of Bar Admissions, entered an order denying the plaintiff's application and stating:

> The Board finds that applicant has not submitted satisfactory evidence of compliance with the qualifications for admission and in particular that applicant does not satisfy the requirements of Miss. Code 1972 § 73-3-2(2) in that applicant has not completed a general course of study in a law school which is provisionally or fully approved in the section on legal education on admission to the American Bar Association.

On September 10, 1984, plaintiff filed suit challenging the Board's action in denying her application and the general constitutionality of the ABA-accreditation requirement. Her complaint requests that she be granted the "diploma privilege"[4] or, in the alternative,

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[4] The "diploma privilege" referred to by the plaintiff is provided for in Miss. Code Ann. § 73-3-2(4) (Supp. 1984), which states that applicants presently or previously enrolled at the University of Mississippi School of Law as of November 1, 1981, shall be admitted to practice upon graduation and are not required to take and pass the bar exam provided that such applicants graduate prior to November 1, 1984.

that she be allowed to take the bar exam under the court's supervision. She also asks that the court hold that graduates from non-ABA-accredited law schools which maintain a six-year integrated pre-law and law curriculum are eligible to take the Mississippi bar exam. Plaintiff further requests this court to rule that the 1983 amendment to Miss. Code Ann. § 73-3-2 is unconstitutional. She lastly asks that she be given a proper forum to adjudicate what she has termed violations of the ABA Canons of Ethics.

JURISDICTION

The plaintiff, in her brief in opposition to defendant's motion, states that this court has jurisdiction to hear this matter pursuant to District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). Because almost every court considering cases involving bar admissions or disciplinary proceedings decided since Feldman has found it necessary to examine closely a plaintiff's allegations and the court's subject matter jurisdiction in light

of that decision, this court will also consider the jurisdiction question. Thomas v. Kadish, 748 F.2d 276 (5th Cir. 1984); Razatos v. Colorado Supreme Court, 746 F.2d 1429 (10th Cir. 1984); Lowrie v. Goldenhersh, 716 F.2d 401 (7th Cir. 1983); Wood v. Orange County, 715 F.2d 1543 (11th Cir. 1983): Howell v. State Bar of Texas, 710 F.2d 1075 (5th Cir. 1983); Rogers v. Supreme Court of Virginia, 590 F. Supp. 102 (E.D. Va. 1984); Solomon v. Emanuelson, 586 F. Supp. 280 (D. Conn. 1984); Rosenfeld v. Clark, 586 F. Supp. 1332 (D. Vt. 1984); Levanti v. Tippen, 585 F. Supp. 499 (S.D. Cal. 1984); Zimmerman v. Grievance Committee, 585 F. Supp. 29 (N.D.N.Y. 1983); Mattas v. Supreme Court of Pennsylvania, 576 F. Supp. 1178 (W.D. Pa.1983).

In Feldman, two applicants for admission to the District of Columbia Bar, Feldman and Hickey, petitioned the District of Columbia Circuit Court of Appeals seeking waivers of the bar admission rule requiring graduation from a law school approved by the ABA. The

Court denied their petitions and they each filed suit in the United States District Court for the District of Columbia challenging the denials of their waiver petitions and the constitutionality of the bar admission rule. The district court dismissed both complaints for lack of subject matter jurisdiction, holding the waiver proceedings to be judicial in nature and, in regard to Feldman's case, stating that if it were to "assume jurisdiction..of this law suit, it would find itself in the unsupportable position of reviewing an order of a jurisdiction's highest court." 460 U.S. at 470. [5] On appeal the United States Court of Appeals for the District of Columbia Circuit reversed and remanded, holding that the waiver proceedings were not judicial acts and that consideration of the constitutional claims by the district court

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[5] Under current provisions of federal law, the District of Columbia Court of Appeals corresponds to a state supreme court, and its judgments, like those of a state supreme court, are directly reviewable only by the United States Supreme Court.

was not foreclosed.[6]

The Supreme Court vacated and remanded the cases for further proceedings, holding that district courts have jurisdiction over general constitutional challenges to state bar rules promulgated by state courts in non-judicial proceedings. The Court also held that the waiver proceedings in the District of Columbia Court of Appeals were judicial in nature and that the district court would not have jurisdiction to review a decision of a state court in such a proceeding even if the plaintiff alleges that the state court's action was unconstitutional. The Court, citing Doe v. Pringle, 550 F.2d 596 (10th Cir. 1976), and emphasizing the distinction between general challenges to state bar admission rules and claims that a state

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[6] The cases of Feldmand and Hickey were not consolidated but were considered in the same opinion by the United States Court of Appeals for the District of Columbia Circuit. Feldman v. Garner, 661 F.2d 1295 (D.C. Cir. 1981).

court has unlawfully denied a particular applicant admission, quoted the following from that opinion:

> The United States District Court, in denying (the plaintiff) relief, declared that there is a subtle but fundamental distinction between two types of claims which a grustrated bar applicant might bring to federal court: The first is a constitutional challenge to the state's general rules and regulations governing admission; the second is a claim, based on constitutional or other grounds, that the state has unlawfully denied a particular applicant admission. The Court held that while federal courts do exercise jurisdiction over many constitutional claims which attack the state's power to license attorneys involving challenges to either the rule-making authority or the administration of the rules,...<u>such is not true where review of a state court's adjudication of a particular application is sought</u>. The Court ruled that the latter claim may be heard, if at all, exclusively the Supreme Court of the United States. <u>I.d.</u>,at 597 (emphasis in original).

460 U.S. at 485.

The Supreme Court, applying this standard to the plaintiffs' complaints, found that plaintiffs had alleged both types of claims and that the district court had no jurisdiction over the allegations regarding the specific action taken on the plaintiffs' waiver petitions

before the District of Columbia Court of Appeals. Specifically, the plaintiffs had alleged that the Court of Appeals acted arbitrarily and capriciously in denying their petitions for waiver and unreasonably and discriminatorily in denying their petitions in view of its former policy of granting waivers to graduates of other unaccredited law schools. The Court found these allegations to be "inextricably intertwined," 460 U.S. at 486, with the decisions to deny plaintiffs' petitions and that, because they would require the district court to review a decision of the highest court of a jurisdiction, the district court did not have jurisdiction over those elements of the complaints. The Court hovever, found that the remaining allegations involved a general attack on the constitutionality of the rule and to that extent the district court did have subject matter jurisdiction.

While plaintiff's complaint in this case is at times difficult to interpret, the court, giving the complaint its most liberal construct-

ion, concludes that plaintiff has raised both types of claims discussed in Feldman. In Counts I, II(a) and II(b) A. of the complaint, plaintiff alleges that defendants acted arbitrarily, capriciously and unreasonably in denying her the right to take the bar exam, that they deprived her of this right without due process, and that they deprived her of her rights while acting under color of state law. As in Feldman, the complaint also presents general constitutional challenges which this court has jurisdiction to consider. The plaintiff requests not only specific relief with regard to her application and right to take the bar exam but also general declaratory relief holding the statute in question unconstitutional and declaring graduates from non-ABA-approved law schools eligible to take the Mississippi bar exam. See Brown v. Board of Bar Examiners of Nevada, 623 F.2d 605 (9th Cir. 1980) (court examined plaintiff's prayer for relief in attempting to characterize nature of plaintiff's claims).

The court having determined that the complaint includes challenges concerning the specific denial of plaintiff's application, it therefore becomes necessary to consider whether that denial was judicial in nature and the plaintiff's allegations concerning the denial beyond this court's jurisdiction.

In this case, unlike in Feldman, the decision to deny plaintiff's application to take the bar exam was made by a state board, the Board of Bar Admissions, and not by a court. A similar situation confronted the Fifth Circuit Court of Appeals in Thomas v. Kadish, 748 F. 2d 276 (5th Cir. 1984). In that case, the plaintiff filled suit in federal district court challenging the action of the Texas Board of Law Examiners in denying his application based on his alleged emotional and mental unfitness. The Fifth Circuit noted that the Board was appointed by the State Supreme Court, acted under its direction and administered rules, procedures and standards for admissions as provided by

the court. Thus, the court found that, in denying the plaintiff's application, the Board was exercising authority on behalf of the court. The Fifth Circuit stated that "the function of the present Board of Law Examiners 'may be analogized to the function of a special master' in taking actions of an 'esentially judicial nature.' " 748 F.2d at 282 quoting Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 434 n.13 (1982). Thomas had not mounted a general attack on the constitutionality of any rule of the Texas Bar Admission, and based upon the holding the Supreme Court in Feldman, the Fifth Circuit affirmed the dismissal by the district court for lack of subject matter jurisdiction.

The Mississippi Board of Bar Admissions is similar in structure to the Texas Board of Law Examiners discussed above. As stated previously, the Board of Bar Admissions is comprised of nine individuals appointed by the Justices of the State Supreme Court. It was

created by the legislature and has the authority to promulgate rules subject to the approval of the Chief Justice of the Supreme Court. As in Tezas, the exclusive power to admit individuals to practice of law in the State of Mississippi is vested in the State Supreme Court. Miss. Code Ann. § 73-3-2(1). The Board in this case, in order dated February 27, 1984, formally denied the plaintiff's application for admission based upon her failure to meet the satutory qualification requiring graduation from an ABA-approved law school. It is clear that, just as in Thomas vs. Kadish, the Board's action in denying the plaintiff's application is essentially judicial in nature. See also Richardson v. McFadden, 563 F.2d 1130, 1132 (4th Cir. 1977) (Hall, J., concurring), cert. denied 435 U.S. 968 (1978); Woodward v. Virginia Board of Bar Examiners, 454 F.Supp. 4, 6 (E.D. Va. 1978), aff'd 598 F.2d 1345 (4th Cir. 1979); Powell v. Nigro, 601 F.Supp.

144 (D.C. 1985). The court therefore concludes that with respect to plaintiff's claims regarding the action of the Board of Bar Admissions on plaintiff's application, this court lacks subject matter jurisdiction. However, just as in Feldman, this court does have subject matter jurisdiction to consider the general constitutional challenges to the state statute and the bar admission rule requiring an applicant to be a graduate of an ABA approved law school.

IMMUNITY

In her complaint in this cause, plaintiff requests an award of money damages pursuant to 42 U.S.C. § 1983 for violation of her constitutional rights. Pendent state law causes of action are also alleged; namely, trespass to chattel, conversion, misrepresentation and fraud. Defendants' answer and motion for summary judgment raise as an affirmative defense the state's immunity from suit guaranteed under the Eleventh Amendment. Pennhurst State School & Hospital v. Halderman, __U.S.__, 79

L.Ed. 2d 67, 104 S.Ct. 900 (1984); Cory v. White, 457 U.S. 85, 91 (1982); Edelman v. Jordan, 415 U.S. 651, 666 (1974); Hawaii v. Gordon, 373 U.S. 57, 58 (1963) (per curiam); Ford Motor Co. v. Department of Treasury, 323 U.S. 459, 464 (1945). The State correctly reasons, pursuant to the authorities cited above, that when relief sought nominally against an officer of the state would operate in fact against the sovereign in that any such retroactive relief would be paid from the state treasury, the Eleventh Amendment bars recovery. Hawaii v. Gordon, 373 U.S. at 58; Edelman v. Jordan, 415 U.S. at667; Karpovs v. State of Miss., 663 F.2d 640 (5th Cir. 1981). The bar extends as well to pendent state law claims which request retroactive relief. Pennhurst State School & Hosp. v. Halderman, 79 L.Ed.2d at 82. However, by "Motion to Amend Pleadings" filed with this court on January 3, 1985, plaintiff deleted her prayer for $11,000 in money damages. Although this pro se plaintiff did not file an amended complaint with this court,

by logical inference the voluntary dismissal of her money damage claims also worked a dismissal of her pendent state law causes of action. Under Pennhurst, such tort damages would not be recoverable against the state regardless of whether plaintiff intended to drop her state law claims. Thus, in its present posture this cause presents a claim for injunctive and declaratory relief against state officials charged with executing the mandates of an allegedly unconstitutional statute.

A critical exception to the Eleventh Amendment immunity of a state arises when a plaintiff seeks to enjoin a state official from enforcing an allegedly unconstitutional state law. Under the well-established principle of Ex parte Young, 209 U.S. 123, 160 (1908), a state official enforcing an unconstitutional state law is "stripped of his official or representative character and subjected to the consequences of his official conduct." The theory underlying Ex parte Young

is that since the state law is unconstitutional and therefore "void", the Eleventh Amendment does not "impart to the (the officer) any immunity from responsibility to the supreme authority of the United States." Id. A federal court may award injunctive relief against such offending state offical so long as the relief is prospective in nature, but may not award retroactive relief in the form of money damages. Edelman v. Jordan, 415 U.S. 651, 667 (1974); Sessions v. Rusk State Hospital, 648 F.2d 1066 (5th Cir. 1981); Karpovs v. State of Mississippi, 663 F.2d 640 (5th Cir. 1981). Declaratory relief is likewise available against a state official without implicating Eleventh Amendment immunity. Gay Student Services v. Texas A & M University, 612 F.2d 160 (5th Cir. 1980), reh denied 620 F.2d 300, cert. denied 449 U.S. 1034.

The Mississippi Board of Bar Admissions clearly qualifies as an arm of the state for Eleventh Amendment purposes. O'Connor v.

BEST AVA

State of Nevada, 686 F.2d 749 (9th Cir. 1982) cert. denied 103 S.Ct. 491. However, because the instant case presents only claims for prospective injunctive and declaratory relief against individual state officials, the defense of Eleventh Amendment immunity is unavailable. A suit challenging the constitutionality of a state official's action, which is the gravamen of plaintiff's action in its present posture, is not a suit against the state for Eleventh Amendment purposes. Pennhurst State School & Hosp. v. Halderman, 79 L. Ed. 2d at 82. Therefore, plaintiff's present action is not barred by the Eleventh Amendment.

VOID FOR VAGUENESS

Plaintiff makes repeated allegations that the provisions relating to qualifications of bar applicants in Rule V of the Rules Governing Admission to the Mississippi State Bar are un constitutionally vague. In her pleadings, plaintiff contends that she was qualified under

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the version of Rule V that was sent to her in July 1983 when she made application to take the bar examination. She further alleges that the "only way to give reasonable meaning to the requirements of the statute" is to read the individual substantive paragraphs of the rule as establishing separate requirements which, upon satisfaction of one or the other, qualifies the applicant to take the examination. Because Rule V does not expressly state that each of its separate requirements must be individually fulfilled before an applicant is qualified, and because plaintiff qualified under one of the substantive paragraphs but was still rejected, plaintiff avers that the entire rule is "void for vagueness."

Rule V reads in pertinent part:

> an application for admission to the bar by examination may be filed by an individual who:
>
> A. is 21 years of age
>
> B. Has received a bachelors degree from an accredited college or university or has received credit for the requirements of the first (3) years of college work from a college or university offering an integrated six-year prelaw and law course, and has com-

pleted his law course at a college or university offering such an integrated six-year course. However, an applicant who has already begun the general course of study of law as of November 1, 1979, either in a law school or under the supervision of a Mississippi lawyer shall submit proof that he has successfully completed two (2) full years of college work.

C. has successfully completed, or prior to taking the examination will complete, a general course of study of law in a law school which is provisionally or fully approved by the section of Legal Education and Admission to the Bar of the American Bar Association. Before being permitted to sit for an examination, an applicant must file with the board a diploma or certificate from such school evidencing the satisfactory completion of such course. However, an applicant who, as of November 1, 1981, is or was previously enrolled in a law school in active existence in Mississippi for more than ten(10) years prior to the date of application shall be eligible for examination for admission; provided that such an applicant must graduate prior to November 1, 1984.

Plaintiff received a bachelor's degree from the University of Southern California. After teaching in the California school system for a number of years, she entered the National University School of Law. National has never received ABA accreditation.

Plaintiff received her degree from National in June 1981. It appears that National had an integrated program as defined in Rule V (1)(B) at the time plaintiff graduated. Thus, plaintiff claims that she was qualified to take the Mississippi bar examination in February 1984 by the apparent exception to the ABA-accreditation requirement contained inRule V(1)(B). To the extent she was misled in placing sole reliance on Rule V(1)(B), plaintiff claims the entire rule is "void for vagueness."

Defendants assert that Rule V(1)(B) is an undergraduate requirement which must be read in conjunction with the ABA accreditation requirement of Rule V(1)(C). Rule V(1)(B), it is contended, merely provides more than one option for an applicant to satisfy the requirement of an undergraduate degree and cannot be read separately from Rule V(1)(C) to provide an express exception to the requirement of a degree from an ABA-accredited law school. Furthermore, defendants state that any vague

ness or uncertainty contained in Rule V is made clear by reference to the statutory requirements set out in Miss. Code Ann. § 73-3-2 (Supp. 1984) (amended 1983), which reads in pertinent part:

> (2) Qualifications. Each applicant for admission to the bar, in order to be eligible for examination for admission, shall be at least twenty-one(21) years of age, of good moral character, and shall present to the board of bar admissions satisfactory evidence:
>
> (a) that he has successfully completed the general course of study of law in a law school which is provisionally or fully approved by the section on legal education and admission to the American Bar Association, and that such applicant has received a diploma or certificate from such school evidencing the satisfactory completion of such course. However, an applicant who, as of November 1, 1981, is or was previously enrolled in a law school in active existence in Mississippi for more than ten (10) years prior to the date of application shall be eligible for examination for admission; provided that such an applicant must graduate prior to November 1, 1984;
>
> (b) That he has notified the board of bar admissions in writing of an intention to pursue a general course of study of law under the supervision of a Mississippi lawyer prior to July 1. 1979, and in fact began study prior to July 1, 1979, and who completes the required course of study prior to

November 1, 1984...; or

(c) That in addition to complying with either of the above requirements, he has received a bachelor's degree from an accredited college or university or that he has received credit for the requirements of the first three (3) years of college work from a college or university offering an integrated six-year prelaw and law course, and has completed his law course at a college or university offering such a six-year course. However, applicants who have already begun the general course of study of law as of November 1, 1979, either in a law school or under the supervision of a Mississippi lawyer shall submit proof he has successfully completed (2) full years of college work. (emphasis added).

Plaintiff erroneously claims that the language "in addition to complying with either of the above requirements" was added in the 1983 amendment to Miss. Code Ann. § 73-3-2. In point of fact, that language was part of the original legislation approved by the Mississippi Legislature on April 16, 1979. See Mississippi Laws, 1979, ch. 486 § § 1-8; re-enacted and amended, Laws, 1983, ch. 457, § eff. from and after July 1, 1983. The 1983 amendment to Miss. Code Ann. § 73-3-2 only deleted the Mississippi residency requirement

for bar applicants.[7] The remaining sections of § 73-3-2, specifically § 73-3-2(2)(c) relating to graduates from six-year integrated programs, were unaltered by the 1983 amendment.

Plaintiff's vagueness claims must fail. As a general proposition, the void-for vagueness doctrine demands that a statute define with sufficient definiteness the particular conduct proscribed, or in this case required, so that an ordinary person of common intelligence can understand what is required of him and in a manner that does not encourage arbitrary and discriminatory enforcement.

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[7] Plaintiff makes a series of allegations intended to void the opertation of § 73-3-2 (2)(c) as to her application: that it was part of the 1983 amendment to the statute; that such amendment was "unauthorized"' that she had no notice of the "unauthorized" amendment when she made application in July 1983; that the amendment was added to clarify the "vague" requirements of Rule V, Rules Governing Admission to the Mississippi State Bar; and that the amended statute cannot be applied retroactively to her. Because it is clear that the 1983 amendment only deleted the residency requirement and the remaining provisions were unaltered, this court finds plaintiff's claims as to the amendment groundless.

Kolender v. Lawson, __U.S.__, 75 L.Ed.2d 903, 909, 103 S.Ct. 1855, 1858 (1983); Village of Hoffman Estates v. Flipside, 455 U.S. 489 (1982); Grayned v. City of Rockford, 408 U.S. 104 (1972); Papachristou v. City of Jacksonville, 405 U.S. 156 (1972). The more important aspect of the vagueness doctrine is not actual notice but the requirement that the statute provide minimal guidelines to govern conduct sufficient to avoid vesting complete discretion in the entity enforcing the statute. Kolender, 75 L.Ed.2d at 909, Smith v. Goguen, 416 U.S. 566, 574 (1974).

In a facial vagueness challenge against a statute regulating a business or economic activity, the burden of proof is on the complainant to "demonstrate that the law is impermissibly vague in all of its application." Village of Hoffman Estates, 455 U.S. at 497. An individual may not make a facial challenge for vagueness on grounds that the statute requires him to conform his conduct to an "im-

precise but comprehensible normative standard." Coates v. City of Cincinnati, 402 U.S. 611, 614 (1971); Ferguson v. Estelle, 718 F.2d 730, 735 (5th Cir. 1983). Rather, a vagueness challenge is "appropriate only when no standard of conduct is specified at all, or when the statute impermissibly delegates basic policy matters to officials charged with enforcement for resolution on an ad hoc and subjective basis, with attendant dangers of arbitrary and discriminatory application." Ferguson 718 F.2d at 735; Grayned, 408 U.S. at 108-109; Shamloo v. Mississippi State Board of Trustees, Etc., 620 F.2d 516, 523 (5th Cir. 1980); Hirschkop v. Snead, 594 F.2d 356, 371 (4th Cir. 1979).

"The most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights. If, for example, the law interferes with the right of free speech or of association, a more stringent vagueness test should

apply." Village of Hoffman Estates, 455 U.S. at 499; Grayned, 408 U.S. at 109. Thus, economic and business regulations are subject to a less stringent vagueness test because the subject matter of such regulations is more narrow, and to prevail on vagueness grounds there must be a showing that the statute is vague in all its applications. Village of Hoffman Estates, 455 U.S. at 497; Tobacco Accessories, Etc. V. Treen, 681 F.2d 378, 382 (5th Cir. 1982).

It is unnecessary for the court to specifically define the nature of the regulation at issue here since it is clear that the statute and rule meet the requirements of fair warning and just enforcement. The statute, Miss. Code. Ann. § 73-3-2, states in precise terms the requirements which must be met by an applicant. Prominent among these requirements is that the applicant present evidence of having received a degree from an ABA-accredited law school. This provision has been a part of the statute since its enact-

ment in 1979, as has the clarifying language at the beginning of § 73-3-2(2)(c) offering alternatives for meeting the undergraduate degree requirement "in addition to complying with" (emphasis added) the requirement of a degree from an ABA-accredited law school. Moreover, the statutory guidelines vest no discretion in the Board of Bar Admissions in enforcing the ABA-accreditation requirement. The statute does not offer the Board an opportunity to enforce its requirements on a subjective basis, and this court finds that the statute was sufficiently clear to offer applicants fair notice of its various requirements at least as early as 1980, some three years before plaintiff made application.

Rule V of the Rules Governing Admission to the Mississippi State Bar presents a more difficult vagueness question. Plaintiff alleges that she relied on Rule V(1)(B) in making application to take the Mississippi bar exam and that she had no notice of the statute. The clarifying "in addition to"

language of the statute is not found in Rule V. Also, Rule V changes the placement of the statutory provisions to present the applicant with a confusing arrangement of the various requirements. Nothing in the version of Rule V sent to the plaintiff in 1983 specifically indicates that each of the separate requirements must be met by an applicant. However, while this court agrees with plaintiff that Rule V in its present form is somewhat confusing, such imprecision is not a sufficient ground for declaring the entire Rule unconstitutionally vague. Plaintiff cannot show that the Rule is "impermissibly vague in all of its applications." Village of Hoffman Estates, 455 U.S. at 497. Read in isolation, as plaintiff asserts it should be "to give reasonable meaning to the requirements of the statute," Rule V(1)(B) would seem to require only a bachelor's degree from an accredited college or a degree from a college or university offering a six-year integrated course to qualify an applicant

for the bar exam. The requirement of a law degree of any sort would be merely an alternative to qualification if the deparate and independent effect urged by plaintiff is conferred on Rule V(1)(B). Such construction of the Rule V requirements is illogical. This court cannot agree with plaintiff that Rule V(1)(C), which states the requirement of a degree from an ABA-accredited law school, is mere surplusage if the applicant can qualify under Rule V(1)(B).

Plaintiff lastly alleges that the facial vagueness of Rule V inhibits the exercise of her constitutionally protected freedom of association. The particular association from which plaintiff is barred through the operation of Rule V is only generally averred, but it thematically relates to her choice of law schools. Plaintiff asserts that "freedom to associate with a non ABA law school pursuant to a legal education and freedom of ideas are basic fundamental First Amendment rights." (Plaintiff's reply brief at 6). This court does not consider such associations to be

inhibited by the requirements of Rule V or § 73-3-2; nor does it deem such associations to fall within the particular protection provided by the Supreme Court in its leading freedom-of association cases. NAACP v. Button, 371 U.S. 415 (1963): Law Students Research Council v. Wadmond, 401 U.S. 154 (1971). The resolution of this issue basically turns on whether the ABA-accreditation requirement serves a legitimate state interest, which will be discussed infra. For vagueness purposes, this court finds that the ABA-accreditation requirement of Rule V and § 73-3-2 does not inhibit plaintiff's exercise of the constitutionally protected freedom of association.

Rule V and § 73-3-2 do not pose the dangersof improper notice or arbitrary and discriminatory enforcement that would require this court to declare that the guidelines for qualification of applicants are void for bagueness. Agreeing with plaintiff that Rule V is imprecise is not enough to void the rule and the statute. Since the statute, with its clearer enunciation of the requirements, was

extant in its present form - save the residency requirement - when plaintiff made application in July 1983, and since the ABA-accreditation requirement vests no discretion in the defendants as to its enforcement, this court is compelled to conclude that Rule V is not unconstitutionally vague.

EQUAL PROTECTION

Plaintiff raises a myriad of equal protection claims in her various pleadings. Fairly summarized, these claims include: the Board of Bar Examiners maintains a pattern and practice of invidious racial discrimination by enforcing the qualification requirements of Fule V and Miss. Code Ann. § 73-3-2, which discriminatory practices were applied to plaintiff (a white female of the Jewish faith) because she attended a non-ABA-accredited law school which supports racial integration; the requirement of a degree from an ABA-accredited law school has a disproportionate impact on black applicants, thereby limiting

the access of Mississippi blacks to the courts, the denial of plaintiff's application was arbitrary, capricious and unreasonable; the provisions of Rule V and Miss. Code Ann. § 73-3-2 relating to the qualifications of "preceptors" and graduates of the Mississippi college School of Law (formerly the Jackson School of Law) prior to the date on which that school received accreditation violate the Equal Protection Clause of the Fourteenth Amendment in that one class of applicants is favored over another; the statutory guidelines discriminate against non-ABA-accredited law school graduates; limiting qualified applicants to those with degrees from ABA-accredited law schools deprives plaintiff of a "fundamental right to livelihood"; and less restrictive means are available to the state in pursuing its interests.

At the outset, the question before this court is what "burden of justification the (challenged) classification..must meet." Zablocki v. Redhail, 434 U.S. 374, 384 (1978),

quoting Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); Pappanastos v. Bank of Trustees, Etc., 615 F.2d 219, 220 (5th Cir. 1980). In order to be entitled to the "strict scrutiny" standard of judicial review, plaintiff must show that the challenged classification "trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion or alienage.." New Orleans v. Dukes, 427 U.S. 297, 303 (1976); Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976). Plaintiff is not a member of any suspect class as such has been defined by the United States Supreme Court. See San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973). [8] Nor is the

[8] Plaintiff lacks standing to assert the "generalized grievances" of black Mississippians in having greater access to the Mississippi courts. Such grievances are shared in substantially equal measure by a large class of Mississippi citizens, black and white, and plaintiff may not arrogate to herself the legitimate legal interests of third parties and assert those interests as her own. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 483 (1982)

right to practice law a "fundamental right" upon which the state may not infringe absent a compelling justification. Potter v. New Jersey Supreme Court, 403 F. Supp. 1036, aff'd 546 F.2d 418 (3rd Cir. 1975); see also Pappanastos v. Board of Trustees, 615 F.2d at 221 (admission to graduate course of law study in taxation is not "basic civil right of man," thus limiting admission to onoy those with degrees from ABA-accredited law schools is constitutional, quoting Skinner v. Oklahoma, 316 U.S. 535, 541 (1942)). Therefore, the proper standard of judicial review of this allegedly unequal government action is the rational-connection test. Califano v. Aznavorian, 439 U.S. 170 (1978).

Under the rational-connection analysis, the challenged unequal treatment is justified if the state can prove that such treatment was rationally connected to a legitimate state interest. New York City Transit Authority v. Beazer, 440 U.S. 568 (1979). Where the unequal treatment is the product of legislation,

as is the case here, federal courts "presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest." Nolan v. Ramsey, 597 F.2d at 579, quoting New Orleans v. Dukes, 427 U.S. at 303. There is no requirement that the state interest behind the classification be precisely enunciated by the Legislature, nor is the Legislature under a constitutional duty to choose the best means to further the legitimate state interest. New Orleans v. Dukes, 427 U.S. at 303; New York City Transit Authority v. Beazer, 440 U.S. at 592; Nolan v. Ramsey, 597 F.2d at 579.

A long line of cases from various jurisdictions have upheld the ABA-accreditation requirement as not violative of equal protection. Such requirement comports with the state's legitimate interest in controlling and regulating the licensing of attorneys who practice within its boundaries. As was stated in the important case of Goldfarb v.

Virginia State Bar, 421 U.S. 773, 792 (1975),

> We recognize that the States have a compelling interest in the practice of professions within their boundaries and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practioners and regulating the practice of professions.

In Hackin v. Lockwood, 361 F.2d 499 (9th Cir. 1966), cert. denied, 389 U.S. 143 (1967), plaintiff made a direct equal protection attack on the ABA-accreditation requirement of the State Bar of Arizona. The Ninth Circuit affirmed the district court's grant of defendant's motion to dismiss, stating,

> (W)hatever the various states, in theri respective wisdom, may require before allowing the taking of bar examination - so long as they are applicable to every citizen alike, it should be of no concern to the federal courts...We conclude that the fundamental question here is whether Rule IV, Section 6 of the Rules pertaining to Admission of Applicants to the State Bar of Arizona is 'arbitrary, capricious and unreasonable.' We conclude an educational requirement of graduation from an accredited law school is not.

361 F.2d at 504. See also, Santos v. Alaska Bar Association, 618 F.2d 575 (9th Cir. 1980)

Lombardi v. Tauro, 470 F.2d 798 (1st Cir. 1972) cert. denied 412 U.S. 919 (1973); Kadans v. Collins, 441 F.2d 657 (9th Cir. 1971), cert. denied 404 U.S. 1007 (1972); Moore v. Supreme Court of South Carolina, 447 F. Supp. 527 (D.S.C. 1977), aff'd 577 F.2d 735 (4th Cir. 1978), cert. denied 439 U.S. 984 (1979); Ostroff v. The New Jersey Supreme Court, 415 F. Supp. 326 (D.N.J. 1976); Harris v. Louisiana State Supreme Court, 334 F. Supp. 1289 (E.D. La. 1971).

In LaBousiere v. Florida Board of Bar Examiners, 279 So. 2d 288 (Fla. 1973), the Florida Supreme Court clearly enunciated the rationale underlying the ABA-accreditation requirement:

> We were persuaded to follow the American Bar Association standards relating to accreditation of law schools because we sought to provide an objective method of determining the quality of the educational environment of prospective attorneys. This was deemed especially necessary because of the rapid growth in the number of educational institutions awarding law degrees. We wished to be certain that each of these many law schools provided applicants with quality legal education, but we were un-

> equipped to make such a determination because of financial limitations and the press of judicial business.

279 So. 2d at 289. See also Rosenthal v. State Bar Examining Committee, 165 A. 211 (Conn. 1933); In re Eisenson, 272 So 2d 486 (Fla. 1972); In re Application of Bryan M Hansen to write the Minnesota Bar Examination, 275 N.W.2d 790 (Minn. 1978); In re Batten, 428 P.2d 195 (Nev. 1967); In re Lorring, 340 P.2d 589 (Nev. 1959); Henington v. State Board of Bar Examiners, 291 P.2d 1108(N.M.1956); Application of Schatz, 497 P.2d 153 (Wash.1972)

This court concludes, therefore, that the statutory requirement that applicants for the Mississippi bar examination present evidence of having received a degree from an ABA-accredited law school is not arbitrary, capricious and unreasonable. The requirement is substantially related to the interest of the state in ensuring the quality of the legal training of prospective lawyers attempting to practice within its boundaries. Because reliance of the ABA standards of accreditation

is a reasonable and non discriminatory means of advancing such state interest, the statutory requirement lacks the indicia of arbitrariness and capriciousness which would inhere if the requirement applied only to nonresidents of Mississippi, or if the requirement were not absolute in nature. Likewise, t-he "unequal treatment" or the "classification" between ABA-accredited law school graduates and non-ABA-accredited law school graduates is justified under the rational-connection test as such serves the interest of the state in arriving at an objective measure of the quality of legal training of its prospective lawyers.

Plaintiff also challenges on equal protection grounds the exceptions provided in Miss. Code Ann. § 73-3-2 for three classes of individuals; (1) those who, as of November 1, 1981, were enrolled in a law school which had been in active existence in the State of Mississippi for more than ten years, provided that such individuals must have graduated be-

fore November 1, 1984; (2) those who, before July 1, 1979, began and so notified the Board in writing that they were pursuing a general course of the study of law under the supervision of a Mississippi attorney and who completed such course of study prior to November 1, 1984; (3) those who were enrolled at the University of Mississippi School of Law on November 1, 1981, graduated before November 1984 and were afforded diploma privileges as authorized by Miss. Code Ann. § 73-3-33. Plaintiff alleges that these excepted classifications constitute an arbitrary, capricious and unreasonable determination on part of the Legislature which has no rational connection to any legitimate state interest.

This court disagrees. The Legislature could reasonably have relied on its own knowledge, combined with that of the Board of Bar Admissions and the Supreme Court, in determining the quality of the legal education offered by the Mississippi College School of Law,

formerly the Jackson School of Law. The Mississippi College School of Law was the one non-ABA accredited law school in the state at the time the statute, § 73-3-2, was promulgated. The practice of the Board of Bar Admissions prior to the statute's enactment in 1979 was to allow graduates of the Mississippi College School of Law to sit for the bar examination upon graduation. Prior practice also allowed "preceptors," those who studied the law under a licensed Mississippi attorney, to sit for the examination. The Legislature could also have reasonable relied on its knowledge of the Mississippi attorneys offering guidance to "preceptors" studying under them. The significant fact is, however, that the three exceptions provided in § 73-3-2 were self-terminating as of November 1, 1984. The statute was intended to be transitional in nature, and the Legislature could, in its discretion and free from constitutional attack, allow individuals who were enrolled or planned to immediately enroll in any of these programs

to finish their studies and be permitted to sit for the bar examination or be admitted to the bar under conditions as previously provided. It is noteworthy that the three exceptions were not limited to Mississippi residents and that the requirement of graduation from an ABA-accredited law school applies with equal force to all applicants from and after November 1, 1984.

The constitutionality of diploma privilege has been directly addressed by the federal courts in Mississippi. Shenfield v. Prather, 387 F. Supp. 676 (N.D. Miss. 1974). In Shenfield, Judge William C. Keady, relying on the rigid curriculum and the Mississippi-law orientation of the University of Mississippi School of Law, concluded that the state's Legislature had a reasonable basis for exempting University of Mississippi law graduates from taking the bar examination. Id. at 688. See also Huffman v. Montana Supreme Court, 373 F. Supp. 1175 (D. Mont. 1974)

In sum, the Equal Protection Clause of the

Fourteenth Amendment does not mandate that the Board of Bar Admissions adopt a standareless set of guidelines for determining applicant qualifications simply because such guidelines, in operation, discriminate against those who do not comply. The requirement that applicants must be graduates of an ABA-accredited law school is rationally related to the state's legitimate interest in ensuring that applicants to the bar have uniform quality legal education. Thus, plaintiff's equal protection claims must also fail.

DUE PROCESS

Plaintiff asserts denial of her right to due process guaranteed by the Fifth and Fourteenth Amendments because the denial of her application was predicated upon the ABA-accreditation requirement. Such claim has been addressed by a number of courts and found to be groundless. See Leis v. Flynt, 439 U.S. 438 (1979); Moore v. Supreme Court of South Carolina, 447 F. Supp. 527 (D.S.C. 1977) aff'd 577 F.2d 735 (4th Cir. 1978)cert.

denied 439 U.S. 984 (1979); Ostroff v. New Jersey Supreme Court, 415 F. Supp. 326 (D.N.J. (1976); Potter v. New Jersey Supreme Court, 403 F. Supp. 1036 (D.N.J. 1975); aff'd 546 F.2d 418 (3rd Cir. 1976). Plaintiff alleges a deprivation of her liberty interests but does not contend that the denial of her application has implicated a liberty interest by the stigmatizing effect of failing the bar admission qualifications. Nolan v. Ramsey, 597 F.2d at 580. Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sinderman, 408 U.S. 593 (1972). This case is thus distinguishable from those due process cases in which "an individual is singled out and denied the right to pursue a profession based upon personal characteristics." Nolan v. Ramsey, 597 F.2d at 580. Willner v. Committee on Character, 373 U.S. 96 (1963); Schware v. Board of Bar Examiners, 353 U.S. 232 (1957). Plaintiff also cannot prevail on her assertion that she had a cognizable property interest in pursuing her chosen pro-

fession which was violated by the ABA-accreditation requirement. Such requirement is only a condition precedent to pursuing the practice of law in Mississippi. Furthermore, s the determination to require bar applicants to present evidence of graduation from an ABA-accredited law school was made by the Legislature and was not directed at the competency of plaintiff or any other particular individuals, plaintiff cannot assert a valid property interest. Nolan v. Ramsey, 597 F.2d at 580; Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441 (1915). Lastly, federal courts have long since abandoned the practice of scrutinizing the wisdom of state laws regulating business conditions under the substantive due process analysis. Williamson v. Lee Optical Co., 348 U.S. 483 (1954). The qualification requirements of the Mississippi Board of Bar Admissions did not in any way violate plaintiff's due process rights.[9]

[9]Plaintiff's allegation that her right to "procedural due process" under the Fourteenth Amendment was violated because she had "no notice of the unauthorized amendment to...

SHERMAN ANTITRUST ACT

Plaintiff contends that § 73-3-2 violates the Sherman Anti-trust Act in that such statute limits the supply of lawyers in Mississippi and is a form of restraint of trade. (Complaint at 7). Specifically, plaintiff alleges that the ABA-accreditation requirement is a form of monopolistic practice proscribed by the Sherman Antitrust Act in that it is intended to limit the supply of lawyers within the state and is therefore a "restraint of trade" and anticompetitive in nature. Peripheral to these antitrust claims is plaintiff's contention that ABA accreditation provides an arbitrary measure of the competence of law school graduates applying to take the bar examination, and that the requirement creates a privileged class which

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[9] § 73-3-2" in 1983 is wholly without merit. The statutory provisions pertinent to plaintiff's claim were in place as of 1979; thus plaintiff's claim of lack of notice is groundless

excludes many competent and fit persons. In order to escape the precedential effect of Parker v. Brown, 317 U.S. 341 (1943), plaintiff avers that "no state sovereignty is involved with the unauthorized amendment to the statute...§ 73-3-2 (Sept. 1983)." This claim is patently inaccurate.

In Parker v. Brown, the Supreme Court enunciated the state law exemption from the operation of the Sherman Antitrust Act, stating:

> We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.

317 U.S. at 350-351.

In a recent case, Hoover v. Ronwin, __U.S.__, 80 L.Ed.2d 590, 104 S.Ct. 1989(1984), the Supreme Court reiterated the Parker state law exemption and clarified the scope of the exemption as to legislative acts:

> Thus, under the court's rationale in Parker, when a state legislature adopts legislation, its actions constitute those of the state...and ipso facto are exempt from the operation of the antitrust laws.

104 S.Ct. at 1995.

The ABA-accreditation requirement was contained in the original language of § 73-3-2, enacted by the Mississippi Legislature in 1979. Mississippi Laws, 1979, ch. 486 § § 1-8. The Rules Governing Admission to the Mississippi State Bar were derived from the statute and were adopted by the Mississippi Supreme Court. Vesting enforcement of the statutory requirements in the Mississippi Board of Bar Examiners is not an "unconstitutional transfer of public sovereignty to a private organization," Application of Schatz, 497 P.2d 153 (1972), sufficient to remove the statutory requirement from the state law exemption. The Board is not a "private organization" but an arm of the state empowered by the legislature to enforce the statutory requirements. Nor is the ABA-

accreditation requirement used to "control competition" in violation of the Sherman Act. Chaney v. State Bar of California, 386 F.2d 965 (9th Cir. 1972); Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975). Rather, the requirement is neutral on its face and was intended to serve the state's interest in regulating the quality of lawyers admitted to practice before the bar. The statutory requirement was mandated by the Mississippi Legislature and as such represents an act of the state in its sovereign capacity. The Supreme Court and the Mississippi Board of Bar Admissions are engaged in activities directed by the Legislature. Such state actions are therefore exempt from operation of the antitrust laws under the well-recognized rule of Parker v. Brown and its progeny.

PRIVILEGES AND IMMUNITIES

Plaintiff's last substantive claim is that the ABA-accreditation requirement

of § 73-3-2 and Rule V violates the Privileges and Immunities Clause of the United States Constitution, Art. 4 § 2. Plaintiff contends that she was qualified to take the bar examination in California following her graduation from National University School of Law, but that her husband received military orders to report to the Meridian Naval Air Station. Plaintiff states that she has no intention of becoming a resident of Mississippi and that, at all times pertinent hereto, she remained a resident of California. The alleged violation is premised on the notion that the Privileges and Immunities Clause confers upon an individual who is qualified to take the bar examination in one state the right to take the bar examination in every other state. It is further alleged that since certain classes of individuals who attended the Mississippi law schools or studied under Mississippi attorneys were given special privileges exempting them from the

ABA-accreditation requirements of the statute, such requirement constitutes a discriminatory residency requirement which must be shown to promote a compelling state interest. See Toomer v. Witsell, 334 U.S. 385 (1948); Shapiro v. Thompson, 394 U.S. 618 (1969); Supreme Court of New Hampshire v. Piper, 53 U.S.L.W. 4238 (U.S. March 5, 1985).

Two significant points are worthy of note at the outset: (1) the ABA-accreditation requirement is in no sense a residency requirement, and it presently applies with equal force to both residents and non-residents of Mississippi; (2) the classification here is between graduates of ABA-accredited and non-ABA-accredited law schools, and the fundamental right of interstate travel, Shapiro v. Thompson, 394 U.S. 618 (1969), is not implicated in such classification. Moore v. Supreme Court of South Carolina, 447 F. Supp. at 530.

In Supreme Court of New Hampshire v. Piper, the United States Supreme Court addressed the rule of the New Hampshire Supreme Court limit-

ing bar admission solely to state residents and found that the rule violated the Privileges and Immunities Clause. Central to such finding was the court's conclusion that "the right to practice law is protected by the Privileges and Immunities Clause: Id. at 4241 thus triggering a heightened standard of judicial scrutiny. After summarizing the state's several justifications for the residency requirement, the court stated, "we find that none of these reasons meets the test of 'substantiality,' and that the means chosen do not bear the necessary relationship to the state's objectives." Id. However, with specific regard to the court's decision on the due process challenge to a state's admission requirements in Leis v. Flynt, 439 U.S. 438 (1979), the court in Piper made the following distinction:

> Our conclusion that Rule 42 (of the New Hampshire Supreme Court) violates the Privileges and Immunities Clause is consistent with Leis v. Flynt, 439 U.S. 438 (1979). In Leis, we held that a lawyer could be denied, without the benefit of a hearing, permission to appear pro hac

> vice. We concluded that the states should be left free to 'prescribe the qualifications for admission to practice and the standards of professional conduct for those lawyers who appear in its courts.' Id at 442. Out holding in this case does not interfere with the ability of the states to regulate their bars. The nonresident who seeks to join a bar unlike the pro hac vice applicant, must have the same professional and personal qualifications required of resident lawyers.

53 U.S.L.W. at 4241, n. 16.

The ABA-accreditation requirement provides a rational and relatively unrestricted means for ensuring the quality of a bar applicant's legal training. However, the court is of the opinion, based on the authorities cited above, that the Privileges and Immunities Clause is not implicated in the statutory requirement that bar applicants present evidence of a degree from an ABA-accredited law school. Equal treatment is accorded residents and nonresidents of Mississippi in the operation of § 73-3-2 and Rule V. Having concluded previously that the state was justified in providing limited and

self-terminating exceptions to the statutory requirements for certain individuals who were in the process of qualifying for bar admission under prior practices--exceptions which themselves did not discriminate between residents and nonresidents-this court further concludes that the Privileges and Immunities Clause offers no constitutional protection for plaintiff in her attempt to void ABA-accreditation requirement as to her application.

CONCLUSION

This court concludes that plaintiff has no constitutional right to sit for the Mississippi bar examination without complying with the educational requirements of § 73-3-2 and Rule V. The ABA-accredition requirement is rationally related to the state's legitimate interest in ensuring that each applicant for the bar has a uniform quality legal education. Accordingly, the court is of the opinion that there are no genuine issues of material fact in existence to support plaintiff's constitutional claims,

and therefore defendant's motion for summary judgment should be granted. It is unnecessary to consider the various pending motions filed by plaintiff. A separate judgment will be entered pursuant to the local rules.

THIS the 27 day of August, 1985.

Tom S. Lee
United States Dist. Judge

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

ARLENE NORDGREN, Plaintiff-Appellant,	)	No. 85-4642
JEROME HAFTER, ET AL Defendant-Appellees	)	Summary Calendar
	)	OPINION

Filed May 12, 1986

Before: Henry A. Politz, Jerre S. Williams and Patrick E. Higginbotham, Circuit Judges.

Per Curiam

Appeal from the United States District Court for the Southern District of Mississippi Tom S. Lee, District Judge, Presiding

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SUMMARY

Constitutional Law/Courts and Procedure

Appeal from grant of summary judgment in favor of defendants.

Affirmed.

Appellant was denied admission to take the Mississippi bar exam on the ground that she

graduated from a non-ABA accredited law school located in California. She then re-applied for admission on the ground that she satisfied the alternative admissions requirement of an integrated, six-year course of legal study. She was again denied admission. She brought this action challenging the constitutionality of the portion of Mississippi bar admission rules exempting the ABA-accreditation requirement for those graduates of non-ABA accredited Mississippi law schools but not non-ABA accredited out-of state law schools. The district court granted summary judgment of favor of defendants.

(1) Federal trial courts and courts of appeal have no power to sit in review of state court decisions. Since the Mississippi Board of Bar Admissions exercised power on behalf of the state supreme court, under rules subject to that court's approval, and also subject to judicial review, the Board's decision was a judicial proceeding for the purposes of determining subject matter jurisdiction.

(2) Federal courts do have subject matter jurisdiction over general challenges to state bar rules, promulgated by state courts in non-judicial proceedings which do not require review of a final state-court judgment. (3) A general constitutional challenge may be barred by the doctrines of res judicata-collateral estoppel because it could be found that an aggrieved bar applicant could have raised such a claim before state tribunals. Here defendants waived the general constitutional challenge defense by not raising it.

(4) Appellant challenged the Mississippi bar admission rules as a violation of equal protection of the laws. Since appellant challenged a classification not based on a suspect class or a fundamental right, nor is she a representative of a suspect class, the court need discern only a rational basis in the legislative classification. (5) The Supreme Court exhibits extreme deference to legislative classifications in actions challenging regulation of licensed professions.

The court need only inquire whether any state of facts reasonably may justify the distinctions in admissions criteria. (6) The challenged provision, a "grandfather clause," serves a legitimate state interest in avoiding undue prejudice to those applicants who relied on pre-1979 admission criteria. The legislature could reasonably rely on its own knowledge of the quality of education offered at Mississippi's unaccredited law schools. The Constitution does not require that Mississippi study and "provisionally accredit" every non-Mississippi, non-ABA accredited law school. Tha court found a legitimate state interest in exclusion of all unaccredited law school graduates except a limited "reliance class." (7) A similar legitimate state interest exists in the "grandfather clause" allowing those completing a course of study with a Mississippi attorney to be eligible for admission to the bar. (8) The court rejected a due process claim based on an amendment to the admission rules enacted while appellant's application for

admission was pending. Appellant incorrectly read the amendment to require more stringent admissions requirements. The statute was not unconstitutionally vague.

OPINION

PER CURIAM:

In this appeal the Court is presented with a constitutional challenge involving as its central theme the Mississippi Bar admissions requirement that applicants for the Mississippi bar examination be graduates of American Bar Association accredited law schools absent certain statutory exceptions. We find that the district court properly granted summary judgment in favor of appellees as to appellant's claims, and we affirm.

I.

In the fall of 1983, the Mississippi Board of Bar Admissions (the Board) denied appellant Arlene Nordgren's bar exam application because she had graduated from a non-ABA accredited law school located in California. Nordgren

reapplied to the Board for admission to the February 1984 bar exam on the ground that she satisfied what she alleged to be Mississippi's alternative admissions requirement, which involves an integrated, six-year course of legal study. The Board again denied Nordgren's application on February 27, 1984.

Subsequently, Nordgren brought this 42 U.S.C. § 1983 pro se action challenging the constitutionality of that portion of the related Mississippi bar admission rules which exempts from the ABA accreditation and written exam requirements graduates from non-ABA accredited out-of-state law schools. In addition to her constitutional claims for which she sought declaratory and injunctive relief plus compensatory and punitive damages, appellant sought recovery under antitrust and state law claims.

Following the district court's grant of summary judgment to the appellees, Nordgren timely appealed to this Court.

II.

A. (1) Because federal trial courts and Courts of Appeal possess no power to sit in review of state court decisions, the district court in this case properly examined its subject matter jurisdiction under District of Columbia Court of Appeals v. Feldman, 460 U.S. 462. 103 S.Ct. 1303, 75 L.Ed 2d 206 (1983). Finding that the Board was an arm of the Mississippi Supreme Court and that its actions were judicial in nature, the district court concluded that no jurisdictional foundation supported appellant's claims arising from the Board's denial of her application. Nordgren challenges this holding on the ground that the Board's action was nota "judicial proceeding". She raises related arguments, but they involve meritless contentions concerning Article III power, abstention, diversity, pendent and "1983" jurisdiction.

In determining that the bar proceeding in this case was a judicial nature, the district court, under the holding in Feldman,

was not required to find evidence of the formal trappings normally associated with judicial proceedings. Rather, the district court properly examined whether Nordgren asserted a claim of right and whether the admissions board exercised court-delegated, judicial power by applying Mississippi admissions rules as to her individually. This Court found such a "judicial proceeding" analogue n Thomas v. Kadish, 748 F.2d 276 (5th Cir. 1984) cert. denied, 105 S.Ct. 3531 (1985), where the Texas bar admissions board applied its admissions criteria in denying Thomas admission on mental fitness grounds.

In this case the Board applied its bar admissions criteria when it denied Nordgren's application on educational "fitness" grounds. Like the Texas Board in Thomas, the Mississippi Board exercised admissions power on behalf of the state supreme court, and it did so under rules which were subject to that court's approval. Miss. Code Ann.

§ 73-3-2(1) & (3). Furthermore, the Mississippi Board's fitness determinations are subject to judicial review.

Like the waiver proceedings in Feldman, the Board's actions here may not have been cast in the common mold of judicial proceedings, but they were sufficient for the district court to conclude correctly that the Board acted in a judicial capacity within the meaning of Feldman(see Thomas, 748 F.2d at 281 & n. 8) When it denied Nordgren's application. Nordgren's quest for review of the specific action as to her own application, therefore, was beyond the district court's subject matter jurisdiction. Otherwise we would be undertaking to review a state judicial decision.

B. (2) The district court next went on to reach Nordgren's general constitutional challenges to the Mississippi Bar rules and statutes. Although, as mentioned above, federal courts do "not have jurisdiction...

over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional". Feldman, 460 U.S. at 486, they do "have subject-matter jurisdiction over general challenges to state bar rules, promulgat- by state courts in nonjudicial proceedings, which do not require review of a final state-court judgment in a particular case." Id.

Appellees agree that the district court properly recognized jurisdiction over Nordgren's "general constitutional challenges". But even a general attack upon the bar admission rules can implicate subject matter jurisdiction. It, therefore, requires this Court's examination to see if appellant is making such a general attack. See, e.g., Giannakos v. M/V BRAVO TRADER, 762 F.2d 1295, 1297 (5th Cir. 1985).

Our jurisdictional scrutiny on this issue must be conducted by examining if Nordgren presented to the district court a general

constitutional challenge to the bar admission rules which was not "inextricably intertwined" with the Board's denial of her own application. Feldman, 460 U.S. at 483 n.16, 486-487.

The distinction "between general challenges to state bar rules as promulgated and challenges to (what amounts to) state court decisions in particular cases...is often difficult to draw." Razatos v. Colorado Supreme Court, 746 F.2d 1429, 1433 (10th Cir. 1984), cert. denied, 105 S.Ct. 2019 (1985); Rogers v. Supreme Court of Virginia, 590 F. supp. 102, 104-108 (E.D. Va 1984). This Court recently applied the distinction in Thomas, where the plaintiff mounted no general attack upon the constitutionality of any rule of the Texas bar admissions procedures, 748 F.2d at 277 n.1, but did allege that his constitutional rights were deprived when the Texas Board, in applying state bar rules, denied his bar application on mental incompetency grounds. Citing Feldman, we held that since Thomas could have sought review of his constitutional

claims in the Texas courts, no federal subject matter jurisdiction supported them. 748 F.2d at 281-282. Compare Howell v. State Bar of Texas. 710 F.2d 1075, 1077 (5th Cir. 1983) (Feldman did not preclude general constitutional challenges to a state's disciplinary scheme applicable to attorneys), cert. denied, 466 U.S. 950 (1984). cited in Hefner v. Alexander, __F.2d__ _(5th Cir., Dec. 31, 1985 No. 85-2030, slip p. 1845, 1854); Rogers, 590 F. Supp. at 106 (no subject matter jurisdiction where plaintiff complains only that her particular constitutional rights were violated by state supreme court).

The record reveals that appllant mounts several "general constitutional challenges" which support subject matter jurisdiction within the meaning of Feldman. Feldman, for example, contended that a District of Columbia bar rule was unconstitutional because, inter alia, it created an irrebutable presumption that only accredited law school graduates are fit to practice law. It was

held that the district court had jurisdiction to hear this claim because it did not require review of the judicial decision of the District of Columbia as it related specifically to Feldman's situation; it only had to review the rule as promulgated.[1]

(3) In the case before us, the appellees do not urge that Nordgren should have appealed the Board's action through the Mississippi courts, raising her general constitutional challenges there. This affirmative defense was available to appellees but was not asserted by them. It was, therefore, waived. Exxon Corp. v. Texas Motor Exchange of Houston, 628 F.2d 500, 507 n. 10 (5th Cir. 1980); see also,

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[1] The Supreme Court did note, however, that even a general constitutional challenge to a statute or rule might be barred by res judicata-collateral estoppel principles, since it may be found that an aggrieved bar applicant reasonably could have raised such claim before the state tribunals. 460 U.S. at 487-489; see also, Korup v. Flaherty, 524 F. Supp. 1160, 1163-1166 (E.D. Pa. 1981).

Carbonnell v. Louisiana Dept. of Health & Human Resources. 772 F.2d 185 (5th Cir. 1985). Furthermore, this waiver does not implicate our subject matter jurisdiction since a general constitutional attack is within our jurisdiction. Feldman, 460 U.S. at 486.

A. (4) Appellant's constitutional argument is largely focused on an equal protection of the laws claim grounded upon the fact that the Mississippi bar admits for examination the graduates of certain unaccredited Mississippi law schools but does not admit the graduates of unaccredited out-of state law schools.

Nordgren's constitutional claim leads us to a review of Mississippi bar admission statutes and rules. The bar admission statutory scheme, made effective in 1979, and amended in 1983 to remove residency requirements, requires that bar applicants must be graduates of an ABA-approved law school. Miss. Code Ann. § 73-3-2(2)(a)

(1985 supp.) One of the exceptions, however, makes eligible for bar admission those who were enrolled in a law school in Mississippi whether or not ABA accredited, on November 1, 1981, who also graduated before November 1984, Id.

Nordgren has stated a colorable equal protection claim, see Pappanastos v. Board of Trustees, Etc., 615 F.2d 221 (5th Cir. 1980); compare Attwell v. Nichols, 608 F.2d 228, 231 (5th Cir. 1979) (per curiam), cert. denied, 466 U.S. 955 (1980). But she is a white Jewish female who challenges a classification which is not based upon racial, religious, gender, or other suspect classifications or fundamental rights. Williamson v. Lee Optical Co. 384 U.S. 483, 488, 75 S.Ct. 461, 464, 99 L.Ed. 563 (1955); Pappanastos, 615 F.2d at 221; Moore v. Supreme Court of South Carolina, 447 F. Supp. 527, 528 (D.S.C. 1977), aff'd, 577 F.2d 735 (4th Cir) cert. denied. 439 U.S. 984

(1978).[2] The district court also correctly concluded that appellant cannot successfully assert standing on behalf of agrieved black applicants to the Mississippi bar. She is not their representative. Valley Forge

2 We recognize that in Supreme Court of New Hampshire v. Piper, 105 S.Ct. 1272, 84 L.Ed.2d 205 (1985), the United States Supreme Court spoke of an individual's opportunity to practice law as a "fundamental right." 105 S.Ct. at 1277, Piper is distinguishable on a number of grounds, not the lease of which is the fact that "it involved only the Article Four' Privileges and Immunities' Clause, U.S. Const art. IV § 2. not the Equal Protection Clause..."Lupert v. California State Bar, 761 F. 2d 1325, 1327 n.2 (9th Cir. 1985). But this general statement cannot take precedence over the many cases which recognize the right of a state to establish high standards for admission to the bar.

Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 482, 102 S.Ct. 752, 764, 70 L.Ed. 2d 700 (1982); see also Town of Ball v v. Rapides Parish Police Jury, 746 F.2d 1049, 1051 n.1 (5th Cir. 1984)

(5) Because there was nothing suspect about the class appellant undertook to represent, the district court needed to discern only a rational basis in the legislative classification[3] challenged here.

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[3] Whether the Mississippi Supreme Court views legislative enactments concerning admission to the state bar as governmental power exercised in aid of that court and thus subject to the court's objection, or as an infringement on the court's powers. see e.g., Goldsmith v. Pringle, 399 F. Supp. 620, 626-627 (D. Colo. 1975) (three- judge court), calls for no variation in analysis. "The manner in which a state chooses to separate and delegate governmental power under state law is ordinarily not a matter of concern under the U.S. Constitution" Shelton v. City of College 780 F.2d 475 (5th Cir. 1986) (en banc).

Cline v. Supreme Court of Georgia, __F.2d.__ __(11th Cir., Feb. 10, 1986, No 85-8521, slip p. 2020,2022). The presumption is in favor of constitutionality. Town of Ball, 746 F.2d at 1058. In general the Supreme Court has exhibited extreme deference to legislative classifications in actions challenging regulation of licensed professions. Lupert, 761 F.2d at 1328 (and cases cited). This Court need only inquire whether any state of facts reasonably may justify the distinctions embodied in Mississippi's admissions criteria. Pappanastos, 615 F.2d at 221.

(6) The "grandfather clauses" are distinctions which serve a legitimate state interest. Indeed, it has been held that where a state upgrades professional license requirements, due process may require a "grandfather provision". Berger v. Board of Psychologist Examiners, 521 F.2d 1056, 1063 (D.C. cir. 1975). In upgrading the bar admission requirements in issue, the Mississippi legislature simply sought to avoid unduly pre-

judicing those applicants who relied on the pre-1979 statutory avenues for bar admission. Mississippi follows a common pattern in making such provision. See Louis v. Supreme Court of Nevada, 490 F. Supp. 1174, 1184 (D. Nev. 1980). Sections 73-3-2(2)(a). (b), and (4) represent a transitional stage for bar admissions within the state, and these exceptions all "expired" in November 1984. Further, since the 1983 amendment deleting the residency requirement, these exceptions have been open to persons from any state, although it is true that the Mississippi law school exception limited non-residential protection only to those who attended the local unaccredited school.

Nordgren's basic argument is that since her California law school program was the equivalent of the statute's Mississippi law school exception, her right to equal protection under the laws was violated. The district court concluded that the "legislature could reasonably have relied on its own knowledge, combined with that

of the Board...and the (state) Supreme Court, in determining...the quality of the legal education offered by the Mississippi College School of Law, formerly known as Jackson School of Law. "See also Shenfield v. Prather, 387 F. Supp. 676, 686 (N.D. Miss. 1974) (three-judge court) (legislature had a reasonable basis for exempting University of Mississippi law graduates from bar exam requirement): Huffman v. Montana Supreme Court, 372 F. Supp. 1175 (D. Mont. 1974) (Montana law exempting only state law school graduates from taking the bar exam is reasonable and therefore constitutional), aff'd mem., 419 U.S. 955 (1974).

Where this Court to accept Nordgren's argument, the Mississippi legislature would be compelled to study and "provisionally accredit" every non-Mississippi, non-ABA accredited law school which spawns a Mississippi-bound graduate. The Constitution does not demand this much, especially where the challenged provisicn was of limited dur -

ation. Goldsmith v. Pringle, 399 F. Supp. 620, 625 (D. Colo. 1975) (three-judge court); cf., Sestric v. Clark 765 F. 2d 655, 664 (7th Cir. 1985) ("(t)he less serious a discrimination is, the less ought to be required to justify it."). cert. denied, 54 U.S.L.W. 2484 (1986). The state is only required to abstain from arbitrarily or irrationally waiving its admission requirements. Zeigler v. Jackson, 638 F.2d 776, 779 (5th Cir. 1981); Louis, 490 F. Supp. at 1182. There is here no arbitrary or irrational exception.[4]

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[4] Appellant points to two individual cases where the Mississippi bar allegedly permitted at least one non-ABA accredited law school graduate to take the Mississippi bar exam. Neither in her motion for summary judgment nor in her "Rebuttal to Defendants (sic) Answer Filed 2/19/85"/ however, does she develop this claim. It thus was not adequately presented to the district court. The record sources to which she cites this Court contain vague conclusory statements and are insufficient for the purpose of preventing summary judgment for the appellees. Fontenot v. Upjohn Co., 780 F.2d 1190, 1195 (5th Cir. 1986). Accordingly this claim, if it was meant to be a claim, is waived. Emory v. Texas State Board of Medical Examiners, 748 F.2d 1023, 1027 n.* (5th Cir. 1984).

In support of Mississippi's rational and proper concern is the fact that the state of California, where Nordgren graduated, "reminds" students of unaccredited law school statre. See Lupert, 761 F.2d at 1328 (9th Cir. 1985), holding that no equal protection violation was established because California requires that first-year students of unaccredited law schools pass an examination before receiving credit for further study. No such requirement is made as to students of accredited law schools. Nordgren does not claim that she relied on Mississippi's exception clauses when she attended her law school. She concedes that her Mississippi bar application coincided with her husband's military transfer to that state in 1983 from California. She therefore, hardly presents a compelling case against a rule which excludes all unaccredited law school graduates except a limited "reliance" class, which itself is an exemption that otherwise imposes no residence requirement. See also Louis, supra, 490 F.

Supp. at 1184 ("one who attends an unaccredited law school knowing it may preclude her admission to practice in the state of her choice cannot complain when she is excluded from practice for that reason." (citation omitted).

B(7) Nordgren also challenges the bar admission statute's "law clerkship" exception to the ABA accreditation and bar exam requirement. This exception extends to those who, before July 1, 1979, began a general course of study of law under the supervision of a Mississippi attorney and who completed, by November 1. 1984, the course of study required by other statutory provisions. § 73-3-2(2)(b). This claim is controlled by the analysis set out above. It is also well known that several states maintain bar eligibility achieved by office law study which takes place within the state.

The remainder of appellant's equal protection claims are attenuated and are without merit.

IV.

(8) Nordgren asserts a due process claim based upon her interpretation of § 73-3-2(2)(C) as it exists in the form of Mississippi Supreme Court Rule V as compared to its provisions in its pre-1983 versions. This statutory subsection requires that both ABA-accredited school applicants and alternative, "reliance-class" applicants are required to satisfy certain undergraduate educational requirements. They must show that they have received: (1) "a bachelor's degree from an accredited college or university": or (2) "credit for the first three years of college work from a college or university offering and integrated six-year prelaw and law course, and ha(ve) completed (their) law course at a college or university offering such an integrated six-year course." § 73-3-2(2)(C). This undergraduate education provision itself contained an exception for "applicants who have already begun the general course of study of law as of November 1, 1979, either in a law school or under the supervision of a

Mississippi lawyer..." § 73-3-2(2)(C). These applicants needed only submit proof of two years of college study. Id.

Nordgren argues that after her first bar application but before the Board denied it, the statute and the rule based upon it were amended to made clear that the change instituted more stringent undergraduate educational requirements for bar admission. Then she asserts that prior to this clarifying amendment in 1983, this provision should have been read to act as no more than an alternative, all-encompassing, "reliance-class" prerequisite, so that mere fulfillment of these requirements alone would gain ones eligibility for admission to the bar regardless of the fact that a law school was out of state and unaccredited. Thus, she claims that the later statutory amendment, which made it clear that this was only an additional undergraduate educational requirement, violated her right to due process.

We find that the district court correctly concluded that Nordgren's factual assertion

is wrong. Subsection(c), since 1979, had contained the words stating that the undergraduate requirements were "in addition to" the ABA-accreditation or alternative law requirements. The 1983 amendment only deleted the residency requirement. The court also properly found that the statute was not unconstitutionally vague.

As to the state supreme court's Rule V on bar admission, the district court properly concluded that notwithstanding the fact that it lacked the words "in addition to", the rule in substance repeated § 73-3-2(2)(c). The rule was clear enough to inform a reasonable person that at the very least this provision could not authorize an alternative bar admission. As the court noted, Nordgren's construction of the rule's requirements is illogical.

CONCLUSION

We do not enumerate other contentions of appellant which we have considered and found unpersuasive. We find that there exists "'no genuine issue as to any material fact

and (appellees are) entitled to judgment as a matter of law.'" Fed. R. Civ. P. 56(c): Fontenot, 780 F.2d at 1194. We find no error in the judgment of the district court.

AFFIRMED.

APPENDIX D

STATUTE I RULE V

Plaintiff-Petitioner is qualified under the statute:

> "Has received a bachelor's degree from an accredited college or university or has received credit for the requirements of the first three (3) years of college work from a college or university offering an integrated six-year prelaw and law course at a college or university offering such an integrated six-year course."

RULES GOVERNING ADMISSION TO THE MISSISSIPPI STATE BAR & SUPPLIMENT...RULE V. 1. B.

MISSISSIPPI RULES OF COURT (Mar. 1983) RULE V.

Defendant-Respondents(Hafter) EXHIBIT A (RULE V.1.D)
(attached to Respondents MOTION FOR SUMMARY JUDGMENT)
380 So.2d.- 384 So. 2d. (Miss., 380 So.2d.231) 1980

Minutes, Supreme Court of Mississippi, November 27, 1979 RULE V (EXHIBIT 51) adopting Rules Governing Admission to the Mississippi State Bar

STATUTE II

MS Code 1972 § 73-3-2 (Sept. 1983)

Addition to Statute II: "(c) That in addition to complying with either of the above requirements,"

Instructions to Senate Bill No. 2398:

LAWS OF THE STATE OF MISSISSIPPI:

> "To amend reenacted section 73-3-2 to delete the residency requirement for persons making application for admission to the bar by examination.

MS Code 1972 § 73-3-2 (Sept. 1983) (Editor's Note)

> "It appears, however, that the Mississippi Legislature has no intent to alter the procedures established by § 73-3-2 for admitting persons to the bar..."